

United States
Circuit Court of Appeals

For the Ninth Circuit. *2*

PACIFIC COAST COAL COMPANY, a corporation, et al. Claimants,

Appellants,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

Appellee.

UNITED STATES OF AMERICA,

Appellant,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

Appellee.

Apostles on Appeals

In Twelve Volumes

VOLUME VI

Pages 2465 to 2968

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CLERK

Upon Appeals from the District Court of the United States for the Western District of Washington, Northern Division.

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(Testimony of James B. Lawton.)

Q. Can you find any instance or any time that you ever did it?

A. No.

Q. Or that anybody else ever did it?

A. No.

The Court: You mean referring to this voyage?

Mr. Ryan: Yes.

Q. (By Mr. Ryan) Referring to this voyage.

A. No.

Q. Well, can you give me the name of any ship, and the date that it was ever entered on any other ship of the Alaska Steamship Company that you have ever been on?

Mr. Long: That is wholly immaterial.

A. On any of the Alaska steamships?

Q. Yes.

A. Well, on all the Alaska Steamship Company's ships.

Q. They enter the bow bearing as well as the beam bearing?

A. Yes, sir.

Q. Now, is this since the stranding or before the stranding?

A. Before the stranding.

Q. Were you the officer on watch?

A. No, I was not. You asked me if I could give you the name of any ship, and I say any ship engaged in the Alaska trade.

Q. But you never made any entry of a bow part of a four point bearing before this stranding occurred, did you? [2390]

(Testimony of James B. Lawton.)

A. I didn't say that I did, no.

Q. You were never an officer before that, were you?

A. No, I was not.

Q. Now, I call your attention to this unusual entry in the 6:00 P. M., May 18, 1935, to midnight watch.

Mr. Long: I object to the word "unusual."

Q. (By Mr. Ryan) In connection with the words "Triple Island"—

The Court: (Interposing) Objection overruled.

Q. (By Mr. Ryan, continuing) —in which the bow bearing is given, "10:45 P. M.; Triple Island, four points".

A. Yes.

Q. That is the only entry in that log book of the bow part of a four point bearing, isn't it?

A. That is all that I see.

Q. How do you account for the fact that that particular entry on that particular watch happens to be different from all other entries on the whole voyage with respect to four point bearings?

A. Well, it was a long watch and a long bearing, and it does not mean anything. You can just as well enter it on the scratch pad in the pilot house as to put it down in the book. It is a practice on all ships. Sometimes they enter four point bearings as well as beam bearings; and sometimes they do not.

(Testimony of James B. Lawton.)

Q. Now, after you once read the taffrail log, or whoever is doing it has read it——

A. (Interposing) Yes.

Q. (Continuing) There is no way of going back and checking on that to see what it was? The log keeps on going, [2391] doesn't it?

A. Yes; it keeps on going.

Q. So after it has been read once, that is the last time that it can be corrected, isn't it?

A. No. You can send a man right back.

Q. Yes.

A. If you see that he made a mistake of fifty miles, you send him right back.

Q. If he made a mistake of fifty miles?

A. Well, two miles, then.

Q. Well, it is like a watch, isn't it? That is, the hands keep going around like they do on a clock, as the ship keeps going ahead, isn't that right?

A. Yes, sir.

Q. So that when you read what the dial says and record it, and then go up on the bridge, there is no way to go back and find out whether—whether what you looked at was correct or not, excepting suppose the change was fifty miles or so, isn't that right?

A. No, it is not right. In certain instances you can do that. For instance, if a man reads a log, and reads it as twenty-five, and brings up the log to the bridge and reports thirty-five, the officer on watch would know that there was a mistake, and

(Testimony of James B. Lawton.)

he will send him back there and he will see that it was twenty-five that he read instead of thirty-five. That has happened lots of times.

Q. Now, you relieved the second mate on the night of the stranding, didn't you?

A. Yes, sir. [2392]

Q. Did he say anything to you about having found any errors in the taffrail log, or errors in the reading of the taffrail log on the watch which was just ending?

A. I don't recall that.

Q. Can you say positively that he did or did not?

Mr. Long: I submit that the witness has answered the question, Your Honor.

The Court: The objection is overruled.

(The witness does not answer)

Mr. Ryan: What was the answer to that question?

The Reporter: The witness did not answer the question.

Q. What was the answer or what is the answer to that question?

A. What is the question?

Mr. Ryan: Read the question.

(Question read as follows: "Can you say positively that he did or did not?")

A. I cannot say positively one way or the other.

(Testimony of James B. Lawton.)

Q. Now, you took this beam bearing of Triple Island Light at 12:06 A. M., did you not, May 19, 1935?

A. Yes, sir.

Q. And you worked out the distance to be 10.5 miles, did you not?

A. Yes, sir, I did.

Q. What allowance, if any, did you make for current in arriving at that conclusion, that the ship was 10.5 miles off, distant abeam from Triple Island Light at 12:06 A. M.?

A. I didn't make any allowance.

Q. Why didn't you?

A. Because the pilot on my watch is the navigator. [2393]

Q. But you were the one who took the bearing and you were the one who worked it out. Now, why didn't you make that allowance for current?

A. I told the miles that we were off by log. That is the best way that we have of estimating our miles off, by log.

Q. You cannot tell how many miles you are distant abeam from a light in taking a four mile bearing, unless you make an allowance for current, can you, and an allowance for deviation, if any?

A. If you run the same course between the four point bearing and a beam bearing, you naturally get your distance off by using your log.

Q. You don't have to make any allowance for current?

(Testimony of James B. Lawton.)

A. No.

Q. If any exists?

A. No.

Q. And you do not have to make any allowance for deviation, if any exists?

A. Oh, I don't say that.

Q. Is that right?

A. I don't say that. You are mixing the questions up a little bit.

Q. Now, suppose the current was setting the "Denali" toward the eastward after this bow bearing was taken at 10:45 P. M., then the distance run between 10:45 P. M. and 12:06 A. M., when you took the beam bearing, would not correctly show the distance abeam from Triple Island Light, would it?

A. Oh, I don't know. [2394]

Q. Do you understand the question clearly?

A. Yes, I believe I understand it.

Q. All right. Answer it.

A. Will you read it again, please?

(Question read as follows:

"Now, suppose the current was setting the 'Denali' toward the eastward after this bow bearing was taken at 10:45 P. M., then the distance run between 10:45 P. M., and 12:06 A. M., when you took the beam bearing, would not correctly show the distance abeam from Triple Island Light, would it?")

(Testimony of James B. Lawton.)

Q. (By Mr. Ryan) That is the distance abeam at 12:06 A. M.

A. It would show awfully close to the distance abeam.

Q. No matter what the current was that was setting her to the eastward, is that right?

A. Well, if there was any extraordinary long or strong current, they would allow for it.

Q. You didn't allow for it, did you?

A. I wasn't on watch.

Q. Well, you made the entry in the log book with reference to the distance abeam of Triple Island Light at 12:06 A. M. on May 19, didn't you?

A. Yes, sir.

Q. And you made it without any allowance for current in any direction, didn't you?

A. I didn't know that there was any allowance for current to be made——

Q. (Interposing) I see. Now——

Mr. Long: (Interposing) Let him answer the question, please. [2395]

Q. (By Mr. Ryan) In other words——

Mr. Long: (Interposing) Let him answer the question. It needs to be explained.

The Court: Just note your objection, and the Court will rule thereon.

Mr. Long: Very well, Your Honor.

The Court: Had you finished your answer?

The Witness: Yes.

(Testimony of James B. Lawton.)

The Court: Is there anything that you want to add to make your answer complete? If so, you may do so. Do so promptly, however.

The Witness: That is complete.

Q. (By Mr. Ryan) You were not expecting any current in that vicinity, were you, on that night of the stranding?

A. The other watch didn't tell us about any current there.

Q. And you were not expecting any on your watch?

Mr. Long: Now, when as to time? I object to the question unless the time is fixed.

Mr. Ryan: The time when he came on watch.

Mr. Long: Six minutes?

The Court: No, do not interrupt. Make your objection. Objection overruled. Proceed.

A. We run that course for six minutes, from 12:00 o'clock to 12:06, on our watch.

The Court: And then what? Answer the question. If that is the foundation for the answer to the question, follow it by your answer.

The Witness: And then we changed the course and went on another course.

The Court: Read the question to the witness.

[2396]

(Questions read and answer read as follows:

“Q. You were not expecting any current in that vicinity, were you, on that night of the stranding?

(Testimony of James B. Lawton.)

A. The other watch didn't tell us about any current there.

Q. And you were not expecting any on your watch?"')

The Court: What is the answer to that question? Just answer the question.

A. Yes, we were.

Q. (By Mr. Ryan) Then why didn't you make allowances for it?

A. We did make allowances for it.

Q. What allowances did you make?

A. I told you that the pilot made three-eighths of a point allowance.

Q. But you made no allowance for the run from 10:45 P. M. to 12:06 A. M., is that right?

Mr. Long: I object to that. It clearly appears that this man was not on watch then.

The Court: Objection overruled. It is what this man did, as I understand it.

Mr. Long: There would be no necessity for doing it if he was not on watch.

The Court: Objection overruled.

A. No, I made no allowance for that tide.

Q. (By Mr. Ryan) And you made no allowance for any deviation of any sort on the compasses?

Mr. Long: The same objection. [2397]

The Court: Objection overruled.

A. No. I was not on that course.

(Testimony of James B. Lawton.)

The Court: Now, at this point the proceedings in this case are adjourned until 10:00 o'clock tomorrow in the forenoon.

(Whereupon an adjournment was taken at 4:30 o'clock P. M., November 9, 1937, to 10:00 o'clock A. M., November 10, 1937.) [2398]

Wednesday, November 10, 1937

10:00 O'clock A. M.

The Court: You may proceed with the trial. Mr. Lawton, will you resume the stand.

JAMES B. LAWTON

resumed the stand for

Further Cross Examination.

By Mr. Ryan:

Q. Will you lay down on this chart a line through the reef, running North $\frac{3}{4}$ East, the way you say the "Denali" was heading at the time of the stranding. You can lay it down on this flat table, with instruments.

The Court: Refer to which chart it is, Mr. Ryan.

Mr. Ryan: I will ask that it be identified as Claimants' Exhibit A-11.

(Chart No. 2828 marked for identification Claimants' Exhibit A-11.)

The Court: You may step down, Mr. Lawton.

The Witness: What do you want me to do now?

Mr. Ryan: Read the question. (Question read.)

(Testimony of James B. Lawton.)

The Witness: You mean approximate, don't you?

Q. (By Mr. Ryan) As nearly accurate as you can make it, through the position where the "Denali" was on that reef.

A. Approximately like that. (Witness draws line on Claimants' Exhibit A-11 for Identification.)

Mr. Ryan: Let the record show that the witness draws a line.

Q. (By Mr. Ryan) Will you on this chart, Claimants' Exhibit [2399] A-11, Hydrographic Office Chart No. 2828, mark "A" at one end of that line and "B" at the other end.

A. How long do you want the line?

Q. You can make it a little longer than you have it there, in each direction.

A. (Witness extends line on chart.)

Q. Put "A" at one end and "B" at the other.

A. (Witness designates on chart.)

Q. Now, that doesn't look anything at all like mid-channel, does it, to anybody standing on that ship and looking ahead?

A. Yes; it certainly does. Your Honor, this end of the Island is covered with haze, and here is what we can see mostly looking in this direction, right through here (indicating on chart.) This was about the angle that we approached it.

Q. Now, that North $\frac{3}{4}$ East that you have laid down, what is that?

(Testimony of James B. Lawton.)

A. Magnetic. You forgot, too, Mr. Ryan, that I tried to tell you the air was deceiving that morning. That was another reason why we thought she was in mid-channel. Deceiving air means air that is hard to judge. In the early morning up in Alaska, or in the evening, most of the time we have deceiving air.

Q. Well, the fact is, taking that line as you have drawn it, the island on your left is less than 5/6 of a mile away from the line, away from the "Denali", isn't it, on the port side?

A. I don't know exactly. I will take your word for it.

Q. How far is it? Do not take my word. How far is it from [2400] that line to Zayas Island?

A. You mean the reef?

Q. Yes—no; that line that you have drawn there.

A. That goes over the reef.

Q. You can come down to this table again, with the instruments, and measure it.

Mr. Long: What is the question?

Mr. Ryan: May I ask opposing counsel—

The Court: Yes, Mr. Ryan, the Court permits you to look on and not be interfered with, and if necessary an opportunity will be given for redirect examination.

The Witness: Well, where we actually struck was on the outside of the reef, the furthestmost reef sticking out in the channel.

(Testimony of James B. Lawton.)

Q. (By Mr. Ryan) Will you measure the distance from the line that you have drawn to Zayas Island?

A. I told you that is an approximate line. That is 1/16 of a mile inside of—

Q. (Interposing) Now, please listen to the question and then do as you are directed. You are asked to tell us the distance from that line that you have drawn to Zayas Island.

A. How much did you say it was?

Q. I am asking you.

A. It is about three-quarters of a mile.

Q. What is the distance from that line to Dundas Island? Are you taking that distance from the reef where the "Denali" was, or somewhere else?

A. You just said not to take it—

Q. (Interposing) No; I didn't say anything of the sort. [2401]

A. Yes, you did.

Q. I am asking you to tell us the distance from that line to Dundas Island.

A. Well, that is just what I did, and you said this line here—that is what you mean, isn't it?

Q. The line that you have drawn there, yes; the distance from that line to Dundas Island.

A. It is two and three-quarters miles.

Q. All right. Now, you have just given that distance from the nearest part of Dundas Island to that line as projected up toward the north of Zayas Island, have you?

(Testimony of James B. Lawton.)

A. You just asked me——

Q. (Interposing) I mean that is what you have done. I just want the record to show it.

A. That is what you said to do.

Q. Now, tell us the distance from that reef at the point where you have indicated the "Denali" stranded to Dundas Island?

A. About three and three-eighths miles.

Mr. Ryan: I want the record to show that in making all these measurements the witness has used dividers and the parallel rulers.

Q. (By Mr. Ryan) Now, will you indicate on that chart where the "Denali" was at 1:30 a.m., May 19, 1935?

A. Do you want me to draw all the course lines out from the other courses, the other watch I was not on, and everything else, and work it up to that?

Q. I want you to indicate on that chart the point where the "Denali" was at 1:30 a.m. on May 19, 1935. You can do it in any way that you desire.

[2402]

A. As I told you before, I did not check the exact location of the ship at 1:30. I knew where she was heading, where we were heading on this edge of Zayas Island. We were approximately right in here. In a country like that you have tide running all around—how the heck are you supposed to know just where you are at? It is impossible. If you can get cross bearings on anything you can do it. I have told you ten times there were no cross

(Testimony of James B. Lawton.)

bearings of any kind taken, except what you could actually see on Zayas Island, and on Dundas Island.

Q. Do you mean by that answer that you cannot do as asked in the question? Read the question to him again. (Question read as follows:

“Q. I want you to indicate on that chart the point where the ‘Denali’ was at 1:30 a.m. on May 19, 1935. You can do it in any way that you desire.”)

A. Well, I do not need to figure. I can tell you as closely as I know, right in here (indicating).

Q. Will you mark that with an “X”, with a circle around it?

A. The way you do your navigating is terrible, all right. We use a little system about it.

Q. Use any system you desire, and use dividers, parallel rulers, and any other instruments you desire.

A. What do you want me to put, just a circle?

Q. Put a cross with a circle around it, the middle intersection of the cross marking the point.

A. I will put it there somewhere. (Witness draws circle on exhibit.)

Q. Write alongside that “Where ‘Denali’ was at 1:30 a.m. May 19.” [2403]

A. Approximately where she was?

Q. Yes. Is that only approximately, or is that exactly, the way you put it?

A. Haven’t I just told you we didn’t get cross bearings to get the exact location?

(Testimony of James B. Lawton.)

Q. All right; put it down there then, where the "Denali" was at approximately 1:30 a.m., May 19th.

A. (Witness indicates on exhibit) "Approximately 1:30 a.m."

Q. Put the word "Denali" just before "Approximately".

A. (Witness indicates on chart.)

Q. Now, where the "Denali" was is at the point marking the intersection of the two lines constituting the cross, is that right?

A. No, it is not right. I said approximately around in this circle, as close as I can get it.

Q. In other words, what you mean to say is the "Denali" was somewhere in that circle, and that is all you can say, is that correct?

A. That is my guess.

Q. In other words, you are indicating the point where the "Denali" was by an area, the entire area inside of that circle, is that right?

A. Possibly. It might be in any one of those places.

Q. Inside of that circle?

A. Yes.

Q. This line through this reef that you have drawn is what is called a line of position, isn't it?

A. Well, you can call it that, yes.

Q. That means the ship is somewhere on that line.

A. She hit that reef. [2404]

(Testimony of James B. Lawton.)

Q. All right. In view of the fact that you have made this so approximate down at this end we will have to work back from the reef. Now, indicate on this chart, Claimants' Exhibit 4-11, the track that the "Denali" followed while she was on this North $\frac{3}{4}$ East magnetic heading or course, before hitting the reef.

A. You give me the mileage all the time and I will try to lay that down. We were bucking an unknown amount of current; how do we know our mileage? You give it to me and I will mark it down.

Q. What was the speed over the ground of the "Denali"?

A. Well, we made around eight or nine.

Q. Will you lay down on this chart from that point that you have marked as the position of the "Denali" on that reef, her track while on the course North $\frac{3}{4}$ East, preceding the stranding?

A. Her track?

Q. Yes.

A. Well, you have got it right there (indicating on exhibit).

Q. All right. You are referring now to this line "A—B", is that right?

A. North $\frac{3}{4}$ East; isn't that what you want?

Q. Now indicate on that line the point at which the "Denali" first took that course North $\frac{3}{4}$ East.

A. Well, I will not indicate that unless you give

(Testimony of James B. Lawton.)

me the distance and speed she was making. You figure that out.

Q. She was making full speed ahead, wasn't she?

A. I told you——

Q. (Interposing) Answer the question now, and we will get along much better. [2405]

A. The engines were going full speed, but that is no sign the ship was making that speed through the water. I don't know that, and nobody in the world knows it. You figure that out.

Q. All right. Just for the purpose of getting this down in some intelligent shape, just please ignore currents, tidal current.

A. It won't be intelligent if you do that.

Q. Well, the Court will determine whether it is intelligent or not. Now, you please do that.

Mr. Long: I object to that, Your Honor. I object to this form of question.

The Court: Let the witness answer the question.

Mr. Long: I am trying to object to the previous question, but Mr. Ryan did not stop. I object to requiring this witness to lay something down that didn't happen. The testimony is that there was current.

The Court: The objection is overruled.

Mr. Long: That cannot be done, of course.

The Court: The question has assumed some things, and if the witness can answer, or can demonstrate his answer to the question, he will do so.

(Testimony of James B. Lawton.)

Q. (By Mr. Ryan) Ignoring tidal current of every sort, indicate on this chart the magnetic course North $\frac{3}{4}$ East of the "Denali" from the reef back to the point where she first assumed that course.

A. Where are all your navigation books?

Q. What book?

A. Bowditch.

Q. Who are the experts you have been working with? [2406]

A. Well, you have got all the books up here.

Q. Why do you need Bowditch for that purpose?

A. Well, I don't need it. I can do without it, if that is what you want.

Q. Don't you remember the times when you assumed these courses, and how long the "Denali" continued on them?

A. Sure, I do.

Q. Well, what is there in Bowditch about that?

A. Can't I find how many miles, in Bowditch, it takes a ship at nine miles an hour to make one mile? Haven't you ever read that?

Q. All right; if you want Bowditch we will get you our copy. You have been working with Capt. Kildahl and Mr. Farwell, and all these experts on the other side, haven't you?

Mr. Long: If Your Honor please, I ask that that remark be stricken.

The Court: Do you object to it?

Mr. Long: I certainly do object to it.

(Testimony of James B. Lawton.)

The Court: The objection is sustained. It is not material.

The Witness: Have you got a scratch pad?

The Court: There is nothing before the Court to be answered at this time.

Mr. Long: I make the further objection that unless counsel includes the amount of current that any course laid down would be obviously misleading and incorrect.

The Court: Mr. Long, the Court has already ruled.

Mr. Long: I want to be certain that Your Honor has my objection.

The Court: The ruling will stand. [2407]

Mr. Ryan: (Addressing the witness) Here is a pad and pencil. I have sent out to get a copy of Bowditch.

The Court: I think this witness should be given an opportunity to answer upon the conditions stated, if he can, and if he cannot I think he should so state, and then proceed. We cannot stop the case to refer to that.

The Witness: I cannot, Your Honor—it is impossible the way he asks me to put the ship—I can put it over in China, even—there was an unknown amount of current.

The Court: You will have to proceed. We cannot stop the case.

Mr. Ryan: If the Court please, may I ask this?

The Court: Yes.

(Testimony of James B. Lawton.)

Q. (By Mr. Ryan) You know the time when you assumed that course, don't you?

A. What course was that?

Q. The course that the "Denali" was on at the time she stranded?

A. Yes, sir; approximately.

Q. And you knew how long she continued on that course?

A. Approximately.

Q. Well, with just that knowledge can't you lay that down on the chart?

A. Yes; I can.

Q. Well, then, do it. Now, here is Bowditch, if you need that.

A. If you give me the distance I am going to use now——

The Court: No; proceed. If you can answer you may do so, or indicate it, if you can with your present knowledge, and if you cannot counsel will be directed to [2408] propound another question.

The Witness: Do you mean to use just eight miles, nine miles, or seven miles?

The Court: Whatever knowledge you have, if by the use of such knowledge as applied to the question propounded, under the conditions stated, if you can answer the question or demonstrate it on the chart, you may do so, and if you cannot do so you will say that you cannot and the Court will direct another question to be propounded.

(Testimony of James B. Lawton.)

Mr. Long: I suggest that the question be asked him, can he do it?

Mr. Summers: He has already answered that.

The Court: That suggestion will not be heeded.

[2409]

A. (Witness drawing on Claimants' Exhibit A-11) Well, there is a dot. That is figuring any time you want to.

Q. Will you draw the course between that dot and the point where the "Denali" was on the chart and indicate at one end the letter "C" and at the other end the letter "D"?

Mr. Long: I object to that question, if Your Honor please. Counsel says, "where the 'Denali' was" on the chart. The witness has testified that he cannot put the point where the ship was because of the current.

The Court: Objection overruled. Read the question.

(Question read as follows:

"Will you draw the course between that dot and the point where the 'Denali' was on the chart and indicate at one end the letter 'C' and at the other end the letter 'D'?"")

The Court: If you can answer it, do so, but do it promptly, or if you can draw that course, do it promptly.

Mr. Ryan: I would like the record to show that the witness is hesitating an unusually long time, and

(Testimony of James B. Lawton.)

that that calls merely for putting a letter at one end of the line—the letter “C” and “D” at the other end of the line——

Mr. Long: (Interposing) Now, if Your Honor please, I want to make an objection, if I may.

Mr. Ryan: (Interposing) The witness has indicated a dot. This is the point—— [2410]

The Witness: (Interposing) I said that I wasn't sure. I said that I cannot tell you how much tide there was. I cannot give you the distance.

The Court: Wait one minute, witness, as counsel is making an objection.

Mr. Long: I object to the question. My objection is that counsel's question calls for this witness to answer where the “Denali” was. The witness has testified, if Your Honor please, that he cannot tell where the ship was because of the current.

The Court: The last objection is overruled. That statement of counsel as to what the record should show, the Court can see that. Unless it be some physical representation on the map explanatory of what a witness indicates or points to the expression of counsel as to what the record should show should not properly be made. That statement will be stricken. Proceed. Answer the question if you can, or if you want to demonstrate anything on the map in answer to the question you may do so, if you can.

The Witness: Will you read that question over

(Testimony of James B. Lawton.)

again, please? You want to get those two lines connected up and mark that, is that what you want?

Q. (By Mr. Ryan) Yes.

A. Well, one end of the line is marked already.

Q. Well, listen to the question.

A. Well, I have listened to it.

Q. Listen to the question.

(Question read as follows:

“Will you draw the course between that dot and the point where the [2411] ‘Denali’ was on the chart and indicate at one end the letter ‘C’ and at the other end the letter ‘D’?”)

A. You want to change this “B” to “D”, do you?

Q. I want you to do what that question asks you to do.

A. Well, that is the “B”——

Q. (Interposing) Don’t you understand the question?

A. Yes, I do.

Q. Don’t you understand what I want you to do?

A. Yes.

Q. Then do it.

A. You mean connect this dot and this line up (indicating on chart)?

Q. Connect that dot and draw a line from it to the place where the “Denali” was stranded, as you have already marked.

A. Well, you have that line there, haven’t you

(Testimony of James B. Lawton.)

(indicating on chart)? You are going over that line, aren't you? (Indicating)

Q. Is this the dot that you marked (indicating)?

A. Yes. Right in there (indicating).

Q. Well, draw a little circle around that dot.

(Witness draws circle)

Q. Now write the letter "C" opposite it.

(Witness writes the letter "C")

Q. Now, connect that dot to the place on the reef where the "Denali" was stranded by a line.

A. Well, you have got to draw through that other line then (indicating on chart).

Q. Well, draw that line.

A. I don't know what you are getting at here (indicating on [2412] chart and drawing on chart).

Q. How long was the "Denali" on that course from "C" to "D" as you have marked it on this chart, Claimants' Exhibit A-11?

A. Well, it was approximately nineteen minutes, if you want that.

Q. On a course North $\frac{3}{4}$ East Magnetic, is that right?

A. That is right.

Q. Now, lay down on this chart, ignoring all tidal current of any sort, the course the "Denali" was pursuing just prior to the arrival at that point "C".

Mr. Long: I would like to make the same objection that I have made heretofore. This witness cannot—it is impossible for this witness to make

(Testimony of James B. Lawton.)

any accurate drawing here of that because of the current which he cannot tell about. This is misleading, if Your Honor please.

The Court: Objection overruled. Proceed to do that, if you can do that, witness.

Mr. Long: Yes; if you can do so.

A. What am I supposed to do about the current?

Mr. Long: Ignore it altogether.

The Court: Read the question, please, Mr. Reporter.

(Question read as follows:

“Now lay down on this chart, ignoring all tidal currents of any sort, the course the ‘Denali’ was pursuing just prior to the arrival at that point ‘C’ ”.)

A. Did you say to draw a line on here?

Q. (By Mr. Ryan) Yes. Draw a line running back from that [2413] point “C” showing the course that the “Denali” was on immediately preceding arrival at point “C”.

A. Yes (drawing on chart).

Q. Have you done that?

A. Yes.

Q. Now, indicate on that line the point at which the “Denali” first assumed that course that she was following just before reaching point “C”.

Mr. Long: It is understood, Your Honor, that my objection goes to all this testimony which excludes the current, without reiterating my objection all the time to these questions?

(Testimony of James B. Lawton.)

The Court: Yes.

Mr. Long: To all this testimony which excludes the current, the most important factor involved.

The Court: The record will show that at all times it excludes the condition as stated in the question.

Mr. Ryan, you have five more minutes for this kind of demonstrating by the use of the chart and projecting thereon supposed circumstances. You have five more minutes to finish this kind of an examination, Mr. Ryan.

Mr. Ryan: May I suggest that it is impossible to finish it in five minutes? I am going to have him draw it clear back to Triple Island Light. If the witness will do it promptly, we can finish in that length of time but I have no control over that.

The Court: Having in mind the value of the testimony and the conditions stated, and the amount of time being consumed by the procuring of that, the ruling of five more minutes in which to finish this kind of an [2414] examination will stand.

Mr. Ryan: May I note an exception?

The Court: Exception allowed.

Q. (By Mr. Ryan) Will you mark that point with the letter "E"?

A. I haven't figured out the time yet. Did you want me to use eight miles or nine miles on this course?

Q. That is up to you what you are using.

(Testimony of James B. Lawton.)

A. Well, if it is twenty miles I will put her right down here (indicating on chart).

Q. Now, don't spar here where we have only five minutes in which to do this. Do as you are told.

The Court: Proceed.

Q. (By Mr. Ryan) Put down on this chart—

The Court: (Interposing) Proceed.

Q. (Continuing) —the point where the "Denali" first assumed that course just before she reached point "C".

Mr. Long: I object to counsel raising his voice to the witness. The witness is doing the best that he can.

The Court: Yes. Just hold your voice down, Mr. Ryan.

Mr. Long: He does not have to speed up—

The Court: (Interposing) Now, that is sufficient. The Court has ruled. Answer the question as best you can, and do it promptly.

A. This is from the course coming up to this line, is that what you mean (indicating on chart)?

Q. (By Mr. Ryan) Yes. Up to that point "C".

A. And connecting this one with "C"? [2415]

Q. Yes, that is right; the course that the "Denali" was pursuing just before she reached the point "C".

Mr. Long: Now, if Your Honor please—

Q. (Interposing) How long was she on that course, and indicate it on that chart.

(Testimony of James B. Lawton.)

Mr. Long: If Your Honor please I will have to object to that on the same grounds as stated before. He does not know the current——

A. (Interposing) I told you.

Q. (By Mr. Ryan) Indicate it on the chart.

A. That is twenty-five minutes. How can I indicate that on the chart? Do you want that put in miles is that what you want?

Q. (By Mr. Ryan) Just answer the question.

The Court: The objection is overruled. The question has stated the conditions eliminating the force of current and the witness should answer that.

A. Well that is about——

Q. (Interposing) Indicate by the letter “D” where the “Denali” first assumed that course that she was pursuing immediately before reaching the point “C”.

(Witness marks on chart)

Q. Now——

A. Wait a minute. (Witness continues marking on chart)

Q. Now, lay down on that chart all the other courses that the “Denali” was following, ignoring current, after 1:30 A. M., preceding her arriving at the point “D”.

The Court: The five minutes are up. You may inquire orally of this witness if there is anything you want to inquire about the position of the various [2416] courses. Enough time has been con-

(Testimony of James B. Lawton.)

sumed in demonstrating the work. Proceed. Resume the witness stand, Mr. Witness. The witness will resume the witness stand.

(Witness resumes witness stand)

Mr. Ryan: If the Court please, there is an unanswered question before Your Honor.

The Court: The time is up. You can orally have him state in words any answer to that question, if you wish.

Mr. Ryan: Am I not entitled to the answer to the question that I asked the witness?

The Court: If you wish to ask him orally you may, but the time is up for drawing illustrative courses on the map.

Mr. Ryan: May I have an exception noted——

The Court: (Interposing) Yes.

Mr. Ryan: (Continuing) ——to the ruling of the Court that the witness shall not answer the question that was asked before the Court made this ruling?

The Court: The exception is noted and it is allowed. Proceed.

Q. (By Mr. Ryan) How did the “Denali” get into the position (brings chart over to the Court’s bench)? May I ask that opposing counsel do not stand between me and the witness chair?

Mr. Long: I do not want to stand there, but I do not see how I can see the chart otherwise.

The Court: Mr. Long, you may stand up here.

(Testimony of James B. Lawton.)

Mr. Long: All right. Very well. (Stands by the Judge on the bench) [2417]

The Court: You may proceed.

Q. (By Mr. Ryan) How did the "Denali" get in the position marked "X" on that chart by you at 1:30 A. M., May 19, 1935?

A. How did she get into that position?

Q. Yes.

A. How do you mean, how she got into that position?

Q. Well, you tell us how.

A. Wherever she was at she got in her actual position by the set of the current to the westward.

Q. You never saw the current, did you?

A. I never saw the current?

Q. Yes.

A. Well, when you are on a ship——

Q. (Interposing) Answer that by yes or no. Did you ever see the current?

A. It was dark.

Q. Certainly. You didn't see it then. That is your answer, isn't it?

A. You don't have to see it to know——

Q. (Interposing) Then answer it that you didn't see it. You didn't see it, did you?

A. No.

Q. Then all you know is that the ship was some place where she should not have been, isn't that right?

A. Why should not she have been there?

(Testimony of James B. Lawton.)

Q. You think that that was all right, for her to be there?

A. Why, certainly. We are trying to pick up Zayas Island to pilot through the channel there.

Q. I see. But all these inferences of yours about current [2418] have no basis in fact then, have they?

Mr. Long: I must object to that, and ask that the witness be allowed——

Q. (Interposing) Excepting the fact——

Mr. Long: (Interposing) Just a minute.

Q. (Continuing) Excepting the fact that the ship was somewhere other than where you expected her to be?

The Court: The objection is noted and it is overruled. He may answer if he knows.

Mr. Long: May he be permitted to explain, Your Honor?

The Court: He may.

Mr. Long: That is what he is trying to do, Your Honor, please.

Mr. Ryan: If the Court please, that kind of interruption of my cross examination I object to.

The Court: I think so, too, Mr. Long. You may resume your place at the counsel table.

Mr. Long: All right (resuming place at counsel table).

The Court: He may answer if he knows.

The Witness: What was the question?

(Testimony of James B. Lawton.)

(Question read as follows:

“But all these inferences of yours about current have no basis in fact, then, have they, excepting the fact that the ship was somewhere other than where you expected her to be?”)

A. Men sailing through those channels many, many years, know that there is an unknown amount of current that will affect the ship. It has been known for years and years. This is not the first ship that has gone to [2419] Alaska, or that has gone through that passage.

Q. (By Mr. Ryan) Do you understand the question?

A. It is hard to understand it the way you put it.

Mr. Ryan: Read the question again to the witness, Mr. Reporter, and I will ask the Court to request the witness to answer it.

(Question read as follows:

“But all these inferences of yours about current have no basis in fact, then, have they, excepting the fact that the ship was somewhere other than where you expected her to be?”)

Mr. Long: Now, Your Honor, I must object to the form of that question. I am frank to say that I do not understand it.

The Witness: Well, I don't understand it either.

The Court: Well, the objection is overruled. If he can answer the question he should do so, and will. If he does not know the answer to the ques-

(Testimony of James B. Lawton.)

tion he will state so, and state it promptly, and then let us proceed with another question.

(Witness does not answer)

The Court: Proceed.

The Witness: Your Honor, I cannot answer that question because I don't understand the way that it is put there.

The Court: Very well. Ask him another question.

Q. (By Mr. Ryan) How do you know that it was current and not unknown deviation of the compass that put the "Denali" where you did not expect her to be?

A. Because we could feel the current affecting the ship. [2420] That is where we live on the ship, we get used to those feelings. We know that the current is there. Now, we could not actually see it, or it didn't have a name on it, but we knew that there was a current.

The Court: All right. Ask him another question.

Q. (By Mr. Ryan) And that is all that you base it on.

A. I don't know what the pilot based it on. He had many more years knowledge than I did of those waters.

Q. I see.

A. He is the navigator on her. Bear that in mind, please.

(Testimony of James B. Lawton.)

The Court: That is sufficient. Ask him another question.

Q. (By Mr. Ryan) Well, outside of that feel that you felt on this dark night, there was nothing to indicate to you that it was current setting the ship over rather than unknown westerly deviation of the compass, was there?

A. Yes, there was.

Q. What?

A. What time do you mean?

The Court: Well, answer the question the best you can.

A. Yes, there was, because we picked up Dundas Island, and we could tell from her that we were too wide off. Shortly after we picked up Zayas Island, and by watching Zayas Island we could tell that the ship was being set to the westward.

Q. That could have been due either to unknown westerly deviation of the compass—

A. (Interposing) There was no deviation.

Q. (Continuing) —or to the current, isn't that true? [2421]

A. No. There was no westerly deviation.

Q. Well, if there was, it could be due to that, couldn't it?

A. Well, there was none.

Q. Well, if there was it could be due to that?

A. No.

Q. And then it could account for it?

A. No, it could not.

(Testimony of James B. Lawton.)

Q. Why not?

A. Because there was a tide or current there.

Q. Assuming your assumption of current, there was no reasonable explanation of the position in which the "Denali" found herself excepting unknown westerly deviation of the compass, isn't that so?

A. No, that is not so.

Q. Then why isn't it so?

A. Well, maybe the ship was steering bad; maybe the man was not making a good course.

Q. What were your duties on that bridge with reference to the steering?

A. I looked after the steering, yes.

Q. Now, are you charging the helmsman with fault in steering this ship?

A. No, I certainly am not, but I say that that could happen. You asked me what else, didn't you?

Q. Now did that happen on this night? Did the helmsman steer a bad course while you were standing there by him on the bridge?

A. I would not say that he did. I don't recall that he——

Q. (Interposing) Well, if you would not say that he did [2422] that, that is excluded as a reasonable explanation, then, isn't it?

A. Why, I don't recall of her ever steering very bad. She is a good steering ship.

Q. Who was the man steering this ship at the time of this stranding?

(Witness does not answer)

(Testimony of James B. Lawton.)

Q. Do you know his name?

A. No, I do not.

Q. Well, now, taking then the circumstances as they existed on that night, there is no reasonable explanation for the "Denali" being over on that reef excepting unknown westerly deviation of the compass, unless you make this assumption of current, isn't that so?

A. Well, do you want me to assume that we are all blind? There were four men on watch. We all were looking——

Q. (Interposing) Answer that question by yes or no, and then you might explain it if you wish.

The Witness: Read the question again, please.

(Question read as follows:

"Well, now taking then the circumstances as they existed on that night, there is no reasonable explanation for the 'Denali' being over on that reef excepting unknown westerly deviation of the compass, unless you make this assumption of current, isn't that so?")

A. That is quite a long question. I wish you would shorten your question up a little.

Q. Do you understand the question or not?

A. I understand part of it, yes, but you go on with so much stuff in between that you mix everything up. [2423]

Q. Answer it as best you can.

A. Will you please read it again, please?

(Testimony of James B. Lawton.)

(Question read to the witness as follows:

“Well, now, taking then the circumstances as they existed on that night, there is no reasonable explanation for the ‘Denali’ being over on that reef excepting unknown westerly deviation of the compass, unless you make this assumption of current, isn’t that so?”)

A. Did you say, “Unkown amount of westerly deviation”?

Q. Yes. Something wrong with the compass is the only explanation of this stranding unless you assume the current, isn’t that so?

A. If it was unknown, how could you be on a reef? You might be over on Cape Chacon, or something like that.

Q. Well, can you give us any reasonable explanation of the “Denali” hitting that reef excepting something wrong with that compass?

A. Yes, I can.

Q. If you exclude current.

Mr. Long: He has answered that. He said that.

Q. (By Mr. Ryan) Or tidal current.

A. I have to——

Mr. Long: Go ahead and answer the question.

A. I have to exclude current?

Q. (By Mr. Ryan) Yes.

A. That you say that you have got charted? You want me to exclude that?

Q. Yes.

(Testimony of James B. Lawton.)

A. Do you want me to assume that the man on the lookout, [2424] and the man at the wheel, and the pilot and myself were blind, too? Is that what you want me to assume? And that we ran right straight into an island? I don't get the drift of it.

Mr. Ryan: Read the question.

(Question read as follows:

“Well, can you give us any reasonable explanation of the ‘Denali’ hitting that reef excepting something wrong with that compass, if you exclude current or tidal current?”)

The Court: If you can answer it, why, say so, and if you cannot, just say so, and let us proceed. Read the question again.

(Question read) [2425]

A. She might have steered a little bad, if that is what you mean;—another reason besides current and deviation.

Q. Did you notice the “Denali” being steered badly on that night of the stranding?

A. I cannot recall at any time that I did.

Q. You say you do not know who was steering the ship—I show you the deck log book, Claimants' Exhibit A-4, your own handwriting—was the quartermaster Emil Tell?—Isn't that correct?

A. I said I don't know.

Q. Isn't that right; isn't that in your own handwriting?

A. Yes.

(Testimony of James B. Lawton.)

Q. Then you do know who was steering the ship.

A. I do not know the man's name, but I know the man, sure.

Q. Was he a competent helmsman?

A. Yes, sir. He had a license issued by the United States Government, the same as we had.

Q. Was he doing his duties efficiently and properly as helmsman at all times when you noticed his steering of the "Denali", or not?

A. He certainly did, but in waters affected by current the ship doesn't steer one straight line, as anybody knows.

Q. Then you make no suggestion that there was bad steering on the "Denali" this night by that helmsman, do you?

Mr. Long: I object to that as repetitious, I think the witness has answered that question.

The Court: The objection is overruled. That last question will stand.

The Witness: I said I didn't recall that, but it could have happened; he could have steered a little off [2426] on one side of the course or the other.

Q. (By Mr. Ryan) But you didn't see it; you didn't see any such thing happen?

A. I do not recall happening to notice it.

Q. Isn't it the duty of the officer on watch to keep looking through that binnacle at the course, and checking up on the steering?

A. You wouldn't get a ship up that far——

Q. (Interposing) Answer that yes or no, whether that is the duty of the licensed officer on watch.

(Testimony of James B. Lawton.)

A. It is not our duty to stand with our head in the compass, no.

Q. And not to check up on the steering by the helmsman on watch by looking through the binnacle at the lubbers' line and compass reading.

A. Yes.

Q. It is your duty?

A. Yes.

Q. Did you perform your duty on that night?

A. Yes.

Mr. Long: I must object to counsel shouting at the witness.

The Court: Yes; let down your voice, Mr. Ryan. Proceed.

Q. (By Mr. Ryan) When you went on watch at midnight where was the lookout stationed?

A. The lookout, when I went on watch at midnight?

Q. Yes.

A. Which man do you mean?

Q. The lookout who was on watch with you at midnight, where [2427] was he stationed, beginning at midnight?

A. He was told at first to stand by and get the log, the reading of the patent log, when Triple Island Light came abeam, when we blew two whistles.

Q. Who told him that?

A. I told him that.

Q. What was his name?

(Testimony of James B. Lawton.)

A. I don't recall his name.

Q. Was he an able seaman?

A. Yes, he was.

Q. Was he Emil Tell?

A. Yes.

Q. So from 12:00 to 12:06 you had nobody on watch as lookout, is that right?

A. From 12:00 to 12:06?

Q. Yes.

A. You don't have to be right up in the——

The Court: (Interposing) Mr. Lawton——

The Witness: Yes, sir; we did have a man on lookout.

Q. But you were keeping him away from his lookout station, is that right?

A. He hasn't any station; he goes where I tell him to go. He can go up on top of the mast or in the smokestack.

Q. Say from 2:00 to 2:44 in the morning, where was the lookout stationed?

A. At 2:44?

Q. From 2:00 a. m. to 2:44 a. m., on May 19th, where was the lookout stationed?

The Court: If you recall. [2428]

The Witness: I do not recall, sir. I might have had him any place, on one wing, on the other wing, up forward, up in the rigging—wherever we tell the lookout to go to look out, that is what he does.

Q. He was not stationed on the forecastle head, so far as you know, is that right?

(Testimony of James B. Lawton.)

A. I said I don't recall whether I told him to go on the forecastle head or not. I might have.

Q. At 2:37 a. m. was the patent log read or not?

A. Yes; it was.

Q. Who read it?

A. The man on watch.

Q. What man?

A. I don't know.

Q. Was it the lookout?

A. Yes; it was the lookout.

Q. That is, you sent him away from wherever he was and sent him back to the stern of the ship, is that right? Answer the questions, please.

A. Yes; that is right. It took him about one minute or two minutes to do that.

Q. Do you remember seeing the lookout on the forecastle head at all during the period from 2:00 to 2:44 a. m., May 19th?

A. I don't recall that.

Q. I show you these photographs, which are in evidence—well, I show you this one in particular, Claimants' Exhibit A-6-9, Cargo Claimants' Exhibit in connection with the Richards deposition, 4-F, and ask you what those large objects are which are shown immediately [2429] forward of the pilot house of the "Denali"?

Mr. Long: May I see it, counsel? Just let me look at it, please.

A. Those look like tanks to me.

(Testimony of James B. Lawton.)

Q. Of what material?—They are big steel tanks, aren't they?

A. They most likely are. I am not going to swear to that. They might have been iron, or they might have been copper.

Q. What is this object at the port side forward of the pilot house sticking up like—something like a Sampson post would.

A. That is pretty hard to see. Do you mean this right here (indicating on photograph)?

Q. Yes; that thing that sticks up in the air, vertical, right in front of the pilot house.

Mr. Long: It is not right in front of the pilot house. Let the witness explain where it is.

The Court: This is cross examination. If there is anything that needs to be brought up and clarified and explained you may do it on redirect.

Mr. Long: Very well, Your Honor. I am sorry.

The Witness: I do not recognize that, so I will not try to explain it. You can only see a little piece of something there—how can you explain that?

Q. (By Mr. Ryan) Do you know what a steel cargo block looks like?

A. I guess I do, yes.

Q. What is this object here? (Indicating) That black object between the end of the boom and the pilot house, as shown on that photograph? [2430]

A. Did you call it a steel block?

Q. I am asking you what it was, if you know.

(Testimony of James B. Lawton.)

A. Yes. It is a blacksmith shop—it is a blacksmith's shop.

Q. Describe it.

A. It has a hook on each end of the wire falls from the winches, a few links, iron links, and a hook where you hook on the slings with—is that what you mean?

Q. I am asking you what the object is, and of what material was it?

A. That is the most I can make out of it.

Q. Of what material was it?

A. I imagine that it was steel—I wouldn't say steel—it is iron.

Q. How far was it from the standard compass?

Mr. Long: Just a minute, please——

Mr. Ryan: If you know.

Mr. Long: Now, just a minute, the evidence shows these photographs were taken a day or two later, and these booms had been changed from the time when the ship was under way. The evidence so shows.

The Court: Mr. Long, that may possibly be, but it has nothing to do with the appropriateness of this question now propounded to this witness.

Mr. Ryan: I may say, Your Honor, that that statement was not correct; this photograph was taken on the morning of the stranding, according to the evidence in the case.

The Court: The evidence will show what the fact is, and the statement of counsel is not necessary.

(Testimony of James B. Lawton.)

The Witness: Mr. Ryan, will you repeat that question? [2431]

(Question read as follows:

“Q. How far was it from the standard compass?”)

The Court: Answer that question, if you know how far it was.

The Witness: I will have to explain a little bit to answer that.

The Court: If you know how far it was, then you may say so, and then in connection with your answer, or subsequent to your correct answer, if there is any explanation that you feel is needed to make the answer full and complete, then the Court will permit you to make that explanation. It is a simple question, it seems to me.

The Witness: I will try to judge the distance, but it is hard to do it here, as the picture is very small. I would say 40 feet from the compass.

Q. You think that object that is shown on that photograph, to which I have called your attention, is 40 feet from the standard compass?

A. Yes, sir. If you will look——

Q. (Interposing) All right. Will you mark that with a fountain pen with the letter “A”, the thing that you say was 40 feet from the standard compass?

Mr. Long: If Your Honor please, I object to this because the photograph is obviously so small that you cannot even see it.

(Testimony of James B. Lawton.)

The Court: The objection is overruled, and you may be seated, Mr. Long. It is a matter that may be inquired into on redirect examination. I am not going to instruct you any further about that. Proceed. [2432]

The Witness: You wanted me to mark down how far——

Q. (By Mr. Ryan) I want you to mark down there on that photograph the object that you say was 40 feet from the standard compass.

A. Mark it down here?

Q. Yes. Put a letter "A" right alongside of it.

A. Is that all right (indicating on exhibit)?

Q. What was the height of the eye of the person standing on the bridge of the "Denali" above the surface of the water in the sea?

A. What bridge do you mean?

Q. The bridge of the "Denali".

A. What deck do you mean?

Q. Standing on the bridge of the "Denali", what was the height of the eye of the officer standing there above the surface water in the sea?

A. It depends on how tall the officer is.

Q. All right. How high were your eyes when you were standing on that bridge, back of the helmsman, above the surface of the water in the sea?

A. Approximately 28 to 30 feet.

Q. Well, you have to know that fact in order to use the tables in Bowditch, do you not?

(Testimony of James B. Lawton.)

A. We have to know that fact when we take the longitude of the sun, yes.

Q. When you were asked the question before the United States Steamboat Inspectors you stated positively 28 feet, didn't you?

A. I believe that is what it is. It is 28 feet.

Q. Then why did you add an extra two feet this morning? [2433]

A. Well, I don't know—why did I?—I have no reason to add two feet. Maybe it was 26 feet, if that helps you.

Q. What is your height?

A. 5 feet, 7 inches.

Q. What is the height of the bridge above the forward well deck of the "Denali"?

A. I don't recall, sir.

Q. Well, give us your best estimate.

A. Well, that is pretty hard, to give an estimate there.

The Court: If you can make an approximation of the amount, do so.

The Witness: I would say 10 feet or so, I don't know. That is just approximate. I have never measured it.

Q. (By Mr. Ryan) What was the height of the well deck above the surface of the water on that night of the stranding?

A. From the rail down to the water?

Q. From the forward well deck down to the surface of the water in the sea, what was the height on the night of the stranding when you were on watch?

(Testimony of James B. Lawton.)

A. From the rail down to the water, that is pretty hard—I am just guessing if I give you an answer.

Q. Give us your best estimate.

A. 12 feet, or something like that.

Q. What are these other objects that are shown in the photograph in the forward well deck of the “Denali”, if you know? I show you Cargo Claimants’ Exhibit 4-F, in connection with the deposition of Commander Richards, which is now marked Claimants’ Exhibit A-6-9?

A. The other objects on the fore deck?

Q. Yes; in the forward well deck. What are they, and of what [2434] material are they?

A. Well, it looks like a tank up there, in this picture.

Q. How many tanks?

A. On the forward deck?

Q. Just forward of the pilot house; how many tanks are there, or were there in the forward well deck of the “Denali”, right next to the pilot house?

A. I see one. You mean this right here (indicating)?

Q. How many tanks do you see there?

A. One, this one up here, too.

Q. The ones that are right next to the pilot house, how many do you see there, on the forward well deck of the “Denali”?

A. One that I recognize as a tank, and the other one I don’t recognize exactly as a tank.

(Testimony of James B. Lawton.)

Q. Well, what was it, a rock crusher, an iron rock crusher?

A. Not that I can see.

Q. Was there an iron rock crusher on the forward well deck of the "Denali"?

A. There was some machinery. I don't know whether it was a rock crusher.

Q. There was a whole lot of machinery right down there in the forward well deck, wasn't there?

A. There was some.

Q. How would a man, the lookout, get over all that stuff and get up to the forecastle head?

A. Oh, that doesn't cover the whole deck. You have to have room in between the hatches, so you can batten the hatches down.

Q. Would you have that?

A. Well, you have to or you cannot batten the hatches down. [2435]

Q. Anyway, there was a lot of iron in the forward well deck of the "Denali"?

A. I said there was some there. I don't recall how much.

Q. Well, how much was there?

A. I don't recall just how much there was.

Q. I will refresh your recollection. There were two sheet iron tanks on No. 2 hatch, weren't there?

A. Sheet iron tanks?

Q. Yes.

A. I didn't load the ship; I had nothing to do with the cargo, but I believe there were some tanks there, yes.

(Testimony of James B. Lawton.)

Q. And there was a motor grader set, and parts, on the port side between No. 1 and No. 2 hatches, wasn't there?

The Court: Mr. Ryan, what is there in the direct examination that makes this proper cross examination? Do you recall what there was?

Mr. Ryan: He was asked about deviation, Your Honor, of the course, this fellow was, on direct examination.

Mr. Long: I would suggest that counsel read the record.

Mr. Ryan: This man doesn't know anything at all about the facts that you have to know to go by.

The Court: The Court rules of its own motion that this is improper cross examination.

Mr. Long: And I make the objection on that ground.

Mr. Ryan: I note an exception.

The Court: Exception allowed. Proceed, and ask him about some other subject matter.

Q. When you saw Tree Point Light ahead, how did it bear?

A. It bore a little on the port bow. [2436]

Q. How much on the port bow?

A. I didn't take a bearing on the right, sir—about a point or so—a point and a half, maybe.

Q. Do you know how much it bore on the port bow?

A. I didn't take a bearing on it, sir. That is all I can answer you.

(Testimony of James B. Lawton.)

Q. Did it bear one degree, or 15 degrees, or 30 degrees, or do you know?

A. I said that I didn't take a bearing. It was on the port bow a little, a point, maybe.

Q. Did you or did you not testify before the United States Steamboat Inspectors, at the trial on June 21, 1935, on page 6, as follows:

“Q. When you saw the light ahead how did it bear, on the port bow, or starboard bow, or dead ahead?

A. A little on the port bow. I don't know how much.”)

Did you so testify?

A. I believe I just did now, the same as then.

Q. How do you happen to remember about a point, or a point and a half, or something like that, now, when you couldn't tell it at that time?

A. Well, I don't remember it now. It was around a point, I imagine.

Q. But you don't know?

A. I didn't take a bearing on it.

Q. Did you see Barren Island Light at any time?

A. No; I cannot recall ever seeing Barren Island Light.

Q. Barren Island Light was up to the north and west of the position of the “Denali”, wasn't it?

A. Yes; I know where it is. [2437]

Q. Did you change the course when Triple Island Light was abeam?

(Testimony of James B. Lawton.)

A. Did I change the course?

Q. Yes.

A. No; I didn't.

Q. Did you or did you not testify on June 21, 1935, before the United States Steamboat Inspectors, in Seattle, at the trial, page 7, as follows:

“Q. You changed the course when Triple Island Light was abeam?

A. Yes, sir.”

Did you so testify?

A. I never told anybody I changed the course. It is a mistake.

Q. You deny that you so testified, is that right?

A. Yes. I never at no time said I changed the course of the “Denali”.

Q. Now, in this log book, that you stated was in your handwriting on this watch, from midnight down to 2:44 a. m., May 19, 1935, you entered the distance when abeam of Triple Island Light, did you not (showing)?

Mr. Long: That is objected to as repetitious. Counsel went all over that yesterday, in detail.

The Witness: I answered that yesterday.

The Court: Has that been gone into, Mr. Ryan?

Mr. Ryan: No; this point has not been gone into, the point that I am going into now, and that is the reason I am going into it now.

The Court: All right; proceed.

Q. (By Mr. Ryan) You entered that, didn't you?

(Testimony of James B. Lawton.)

A. Yes, I did. I told you yesterday I entered that. [2438]

Q. When Triple Island Light was abeam the second time why didn't you enter the distance abeam?

A. The distance abeam?

Q. Yes; at 1:00 a. m.

A. How do you mean, the distance abeam?—Distance abeam?—What do you mean?

Q. When Triple Island Light was abeam for the second time, on the morning of May 19th, at 1:00 a. m., why didn't you enter in the log book the distance that the light, Triple Island Light, was from the "Denali", when it was abeam that second time?

A. The distance we were off, you mean, off the Light?

Q. Yes.

A. Why, I didn't enter the distance?

Q. Why not?

A. Because I didn't take a bearing on it, figure out any distance, that is why I didn't enter it.

Q. What did you enter with reference to that second abeam bearing on Triple Island Light?

A. I entered the minutes run.

Q. You entered 54 minutes, isn't that right?

A. Yes.

Q. Does that make any sense?

A. Sure.

Q. What?

(Testimony of James B. Lawton.)

A. It means we ran 54 minutes between Triple Island Light abeam the first time and Triple Island Light abeam the second time.

Q. With that information couldn't you figure out the distance abeam, that second time? [2439]

A. Well, I did not.

Q. Why didn't you?

A. Because the pilot was looking for his landmarks. He was navigating by the landmarks he was going to pick up. He was not interested——

Q. (Interposing) Did the pilot tell you not to do it?

A. He didn't tell me to do it.

Q. Do you remember when you passed Prince Lebo Island?

A. Well, I cannot recall that I do remember when we passed it.

Q. Did you ever see Prince Lebo Island?

A. Not to my knowledge.

Q. Did you ever look for it, on that night?

A. Oh, naturally.

Q. Why couldn't you see it?

A. The island has a background much larger than it is, and in that kind of atmosphere the island merges right in with the larger one in the background of it.

Q. You mean the hazy weather is the reason you couldn't see Prince Lebo Island?

A. No; I wouldn't say that.

Q. Well, what do you mean?

(Testimony of James B. Lawton.)

A. I mean if you stood it right out in the middle of the ocean and ran by it you could have seen it, most likely, but if you ran by it in that place, with the black background, large mountains and many shadows in the mountains, night shadows, it was impossible to pick it up, as far as I could see.

Q. What was the height of Prince Lebo Island?

A. It is very low.

Q. What height, do you know? [2440]

A. I don't think I remember the height. It is low.

Q. What is your best estimate of its height?

A. Well, I cannot recall the height of Prince Lebo Island.

Q. What does this chart, No. 2828, show to be the height of Prince Lebo Island; referring to Claimants' Exhibit A-11?

A. It shows 200 feet.

Q. It shows 200 feet. Well, when the "Denali" was at the point marked with the cross, which you say was at 1:30 a. m., what was the nearest land to the "Denali" at that time?

A. Why, I imagine Prince Lebo Island was.

Q. Well, you couldn't see Prince Lebo Island, and you could see what?

A. I imagine I could see——

Q. (Interposing) Do not imagine anything, if you do not know, say that you do not know.

A. I said the high land of Dundas Island. The high land on Dundas Island is Mt. Hendron, 1400 feet.

(Testimony of James B. Lawton.)

Q. What else could you see at 1:30?

A. At 1:30, you say?

Q. Yes.

A. I could see Zayas Island, too.

Q. And Zayas Island is much farther away than Prince Lebo Island was at that time, wasn't it?

A. Yes.

Q. So the nearest land to you, you couldn't see at all?

A. I explained to you why you couldn't see it.

Q. You couldn't see it at all, could you, the nearest land to you?

A. I don't recall of ever seeing it, no. [2441]

Q. And it was 200 feet high?

A. Yes.

Q. And yet you think you could see miles and miles away something else, away off in the distance?

Mr. Long: I object to counsel arguing with the witness and raising his voice again.

Mr. Ryan: I am not raising my voice.

The Court: The objection is overruled, and the witness may explain his answer, if he wishes.

The Witness: I wish to tell Mr. Ryan that 200 feet is very low, when you are facing an island when it is in front of high land, that is, mountains over 1000 feet high. In the night time it will look like part of the island. If it were sitting up by itself in the middle of the ocean it would be a distinct landmark of its own.

The Court: That is sufficient. Proceed.

(Testimony of James B. Lawton.)

Q. (By Mr. Ryan) What time did it begin to break day on the morning of May 19, 1935?

A. It was around 3:00 a. m., sir.

Q. When the "Denali" struck was it pitch dark or not?

A. No; it was not pitch dark.

Q. What was it?—Was it dark?

A. Yes; it was dark.

Q. Did you or did you not testify before the United States Steamboat Inspectors, on June 21, 1935, as follows, page 8:

"Q. When the vessel struck it was pitch dark?

A. Yes, sir; it was dark."

Did you so testify? [2442]

A. Just like I told you now.

Q. Did you so testify?

A. I don't recall exactly, but I believe I did.

The Court: If there is no difference between his testimony then and now, then there is no use in cluttering up the record, Mr. Ryan.

Q. (By Mr. Ryan) On what course was the "Denali" when she crossed the line of bearing between Triple Island Light and Barren Island Light?

A. I don't recall what course she was on then.

Q. Well, will you look at the chart and see if that refreshes your recollection?

The Court: Will you look at it and see if it does?

Mr. Long: May I make an objection, Your Honor?

(Testimony of James B. Lawton.)

The Court: Yes.

Mr. Long: I object to this as improper cross examination. No mention was made on direct examination, or any place else, of Barren Island Light, or any direction from Barren Island Light.

The Court: Some mention was made of some of the courses involved in that neighborhood, or in those waters?

Mr. Long: May I suggest, Your Honor, that the only thing that has come out has been on cross examination, where this witness said he could not see Barren Island Light.

The Court: Well, the objection is overruled.

Mr. Long: Exception, Your Honor.

The Court: Exception allowed.

The Witness: Will you point out Barren Island Light for me on this chart? [2443]

The Court: You mean you cannot locate it on this chart? Is that what you mean?

The Witness: I do not seem to see it there.

The Court: The witness says he cannot see it on this chart.

Q. (By Mr. Ryan) I show you Claimants' Exhibit A-10, Chart No. 8102, and ask you if you can find Barren Island Light on it?

A. Yes, sir.

Q. Now, tell us on what course the "Denali" was at the time she crossed the line of bearing between Triple Island Light and Barren Island light?

(Testimony of James B. Lawton.)

A. I do not recall that, sir.

Q. Can you tell us now?

A. I have told you that I do not know exactly where we were at. How can I tell you what the course was?

The Court: Ask him another question.

Q. (By Mr. Ryan) You cannot tell us what course you were on?

A. No, I cannot say, sir. [2444]

The Court: Ask him another question.

Q. You cannot tell us what course you were on?

A. No, I cannot, sir.

Q. At 1:30 A. M. or thereabouts on May 19th, 1935?

A. You tell me what——

Q. (Interposing) I am asking you to tell us. Do you mean to tell us that you cannot tell us now what course you were on shortly after 1:30 A. M., on May 19, 1935?

A. Yes. ...

Q. You can tell us?

A. Yes.

Q. Then do it.

A. Shortly after——

Q. (Interposing) The line of bearing between Triple Island Light and Barren Island Light crosses the course that the "Denali" was following?

Mr. Long: If Your Honor please, may I make an objection——

A. (Interposing) We never navigated by that——

(Testimony of James B. Lawton.)

The Court: (Interposing) Yes, you may, Mr. Long.

Mr. Long: There is no testimony, except counsel's own statement about any course from Barren Island Light. This witness has told us not only once but three times that Barren Island Light was not visible. I do not see why counsel should confuse the witness' testimony to the Court.

The Court: I cannot tell with certainty whether or not Barren Island Light was located within the vicinity of one of these courses pursued, or attempted [2445] to be pursued by the "Denali" on the voyage in question. Therefore the objection is overuled. I think it is in the general vicinity of one of these courses that the vessel is supposed to have been on, and if the witness can answer the question, he may do so.

A. I cannot answer it because we could not see the light. He asked me if we could see it, and I told him, "No".

Q. (By Mr. Ryan) Will you come over to this table and bring with you some parallel rulers—

The Court: (Interposing) No, he will not do that. Ask him the question.

Q. (By Mr. Ryan) Now, you have the chart lying before you, Claimants' A-10, "C & G S Chart No. 8102"—don't you?

A. Yes, sir.

Q. Now, you can see Barren Island Light there, can you not (indicating).

(Testimony of James B. Lawton.)

A. Yes, sir.

Q. And you can see Triple Island Light?

A. Yes, sir.

Q. And you can see a line joining the two—I mean a mental line joining those two lights there, Triple Island Light and Barren Island Light?

A. Yes.

Q. Now, the course that the “Denali” was pursuing from 1:30 A. M. on May 19th to the point of stranding crosses that line, doesn’t it?

A. Yes, but we didn’t see——

Q. (Interposing) All right. Indicate where it crosses that line on that chart, Claimants’ Exhibit A-10?

A. I don’t know where it crossed it. We didn’t see Barren [2446] Island Light.

Q. Well, you can give us that, about what time it crossed that line, can you not?

A. I am not giving you any estimation about that. I told you that we didn’t see that light, and we do not navigate by lights that we do not see. You put a line yourself on that.

Mr. Ryan: If the Court please, it is really necessary to have the witness draw a line between Barren Island Light and Triple Island Light, and then have him lay the “Denali’s” course across that, so that that point can be fixed as a foundation for impeachment, or for further impeachment of this witness.

The Court: The witness says that he cannot make the estimate of the line, or the approximate

(Testimony of James B. Lawton.)

location of it, because he did not see the light in question, and so far as he knew the ship did not move with reference to any bearing on it.

Mr. Ryan: If the Court please, may I suggest that that has nothing to do with the point, for this reason, that Barren Island Light he has picked out on the chart, and he has picked out Triple Island Light. Between those two it can be laid down with a ruler on the chart. Now, the witness has undertaken here on direct to give us just the courses that this vessel pursued, and the length of time that she pursued them, magnetic, at all times from leaving Triple Island Light until the point of the stranding. Now, he can show us where that line crosses that line between those two [2447] points.

The Court: Can you do that?

The Witness: To draw that line between Triple—

The Court: (Interposing) In view of the fact, can you show that?

The Witness: Yes, a line, Your Honor, but that is a line between two points on the chart, and one of these points at no time did we see. He wants us to place the ship somewheres on this line between the two lights, but I told him that I could not place it—

The Court: (Interposing) Very well—

A. (Continuing) —on that line.

The Court: Very well. In view of the testimony the request is declined. Proceed.

(Testimony of James B. Lawton.)

Mr. Ryan: May I suggest that the witness testified a few moments ago——

The Court: (Interposing) The ruling has been made, and it will stand.

Q. (By Mr. Ryan) But the "Denali" crossed that line—a line drawn between Triple Island Light and Barren Island Light, didn't it?

A. Yes, sir, but I don't know where we were when we crossed it. I told you that before.

The Court: Proceed with another question.

Q. (By Mr. Ryan) Did you or did you not testify before the United States Steamboat Inspectors on June 21, 1935, at the trial of Captain Obert as follows:——

Mr. Long: What page?

Mr. Ryan: Page 8.

Q. (By Mr. Ryan) Did you not testify at that time as [2448] follows:

"Q. Will you step to the chart, Mr. Lawton?

A. Yes, sir.

Q. I will designate that as the supposed position of the ship when Triple Island was abeam. As the ship proceeded on its course North $\frac{3}{4}$ West it crossed this line of bearing between Triple Island and Barren Island, is that clear to you?

A. Yes, sir."

Did you or did you not so testify?

A. I don't recall that, sir.

(Testimony of James B. Lawton.)

Q. Do you deny that you did so testify?

A. No, I don't deny it.

Mr. Long: Where is this place that you are reading from?

Mr. Ryan: On page 8.

Mr. Long: Is this on the trial of Captain Obert?

Mr. Ryan: There is only one trial.

Mr. Long: I cannot locate it.

Q. (By Mr. Ryan) Now, after Triple Island light was abeam the second time the "Denali" could go an hour, could it not, and that light still be visible under the conditions then existing?

A. Yes.

Q. Did you see Triple Island Light for one hour after the "Denali" had passed her for the second time abeam at 1:00 A. M. on May 19, 1935?

A. Well, I don't recall right now, sir, whether I did see it or whether I didn't see it. [2449]

Q. For how long a period did you see it?

A. I don't recall that, sir.

Q. All right. Did you or did you not testify on June 21, 1935, before the United States Steamboat Inspectors in Seattle, at the trial, page 8 of the official transcript, as follows:

"Q. After the light was abeam the ship could go an hour, couldn't it, shouldn't that light still be visible?

A. Yes, it should be.

Q. Didn't you see it?

(Testimony of James B. Lawton.)

A. I looked several times, but I don't know just how far we were ahead.

Q. How long was it approximately that you saw that light after it was abeam?

A. About an hour".

Did you or did you not so testify under oath? And then following that,

"Q. You saw that light about an hour after it was abeam?

A. Something like that".

Did you or did you not so testify under oath?

A. I cannot recall, but if it is there I must have said that.

Q. Do you deny that you so testified——

A. (Interposing) No, I do not.

Q. (Continuing) ——under oath at that time?

A. No, I do not.

Q. Was there any conspicuous object on Zayas Island that you could have taken a bearing on?

[2450]

A. No, sir.

The Court: You are referring to the time of the stranding, or the approximate time of the stranding?

Q. (By Mr. Ryan) From 1:30 up to the time of the stranding.

A. No, sir.

Q. What do you think about keeping the ship going full speed if you didn't know exactly where she was?

(Testimony of James B. Lawton.)

A. What was that question?

Q. (By Mr. Ryan) Read the question.

(Question read as follows:

“What do you think about keeping the ship going full speed if you didn’t know exactly where she was?”)

A. Do you want me to answer that?

Q. Yes.

A. Why, I think it is all right.

Q. Why is it all right? Why was it all right on that night?

A. Well, it was all right because we were going full speed through the currents, and everything seemed to be fine and dandy. There is no reason why you should not go full speed.

Q. Right up to the time of the stranding, isn’t that so?

A. That is what I believe, yes, sir.

Q. Do you think that the pilot used good judgment in all respects in connection with navigating this ship?

A. Yes, I do.

Q. On the night of the stranding?

A. Yes, I do.

Q. You are satisfied that the pilot conducted himself in a shipshape and proper manner, are you, at all times, on [2451] this night of the stranding?

A. Well, I thought that he did, and I still think that he did.

(Testimony of James B. Lawton.)

Q. You felt confident that there was no doubt of the ship's position, did you, up to the moment of stranding?

A. I had confidence in the pilot, knowing that he had the ship where he wanted it through his local knowledge, being able to see Zayas Island on one hand and Dundas Island on the other hand.

Mr. Ryan: Will you read the question, and please answer it directly, if you can.

(Question read as follows:

“You felt confident that there was no doubt of the ship's position, did you, up to the moment of the stranding?”)

A. No, I had no doubt.

Q. And you were satisfied at all times of the way that things were being conducted up to the moment of the stranding?

A. Yes, sir, I was.

Q. Now, was the “Denali” behind time in leaving Seattle on this voyage?

A. She was a little late, if that is what you mean.

Q. How late was she?

A. Well, they sailed when they got the cargo loaded. I don't know what time they were going to sail.

Q. Well, she was due to sail the previous day, wasn't she?

A. I believe so, yes, sir.

(Testimony of James B. Lawton.)

Mr. Ryan: That is all, Your Honor.

Mr. Pellegrini: I have a few questions that I want to ask the witness. [2452]

Mr. Ryan: If the Court please, there is a motion that we want to make before Mr. Pellegrini starts.

Mr. Pellegrini: Do you wish to make the motion now?

Mr. Ryan: Mr. Summers will make the motion.

The Court: Very well.

Mr. Summers: I will wait until Mr. Pellegrini is through with his examination.

The Court: Very well.

Cross Examination

By Mr. Pellegrini:

Q. Mr. Lawton, I believe you testified yesterday that at the time of the stranding the ship was on a North $\frac{3}{4}$ East course, is that right?

A. Yes, sir.

Q. Now, you had previously testified on the examination before the Steamboat Inspectors on May 24, I believe, that at the time of the stranding the ship was on a North $\frac{3}{4}$ West heading, isn't that correct?

Mr. Long: That is objected to as being repetitious. At least half an hour to three-quarters of an hour was spent on that.

A. Yes, sir, I did.

The Court: What do you say about that, Mr. Pellegrini?

(Testimony of James B. Lawton.)

Mr. Pellegrini: At this time I wish to make this statement to the Court. I realize that this is in some [2453] degree repetitious, but the Government has a far greater interest in this case than the mere collection of the sum of \$38,000. This is a case involving the testimony of these witnesses before the Steamboat Inspectors, when they were under oath, and——

Mr. Long (Interposing) I make the objection——

Mr. Pellegrini: (Continuing) ——and I am going to request the Court at this time to overrule that objection.

Mr. Long: I object to counsel making this speech.

The Court: Just wait, Mr. Long.

Mr. Long: Well, it is just a prepared speech, obviously.

Mr. Pellegrini: It is not a prepared speech, Mr. Long.

The Court: Wait until counsel gets through, Mr. Long.

Mr. Long: Well, I want to interpose an objection.

The Court: Wait until counsel gets through before you interpose the objection.

Mr. Long: Very well.

Mr. Pellegrini: I request right at this time, if the Court please, in view of the Government's obvious interest, in addition to the collection of this money, to be allowed to cross examine this witness. I can assure the Court that it needn't take more than five or ten minutes.

(Testimony of James B. Lawton.)

The Court: The request is denied.

Mr. Pellegrini: Exception. [2454]

The Court: Exception allowed.

Mr. Long: What was Your Honor's ruling?

The Court: The request is denied of further cross examination on that point by Mr. Pellegrini.

Mr. Pellegrini: Now, I wish to show the Court as to page 16 and page 17 of the investigation, that Mr. Ryan has not covered some of the portions of that in his cross examination.

The Court: If it relates to the subject matter—

Mr. Pellegrini: (Interposing) It relates to the same subject matter.

The Court: Then it is denied. The rule will stand as applied to that.

Mr. Pellegrini: May I note an exception?

The Court: Yes.

Mr. Pellegrini: To the Court's ruling?

The Court: Yes. Exception allowed. Mr. Summers, do you wish to make your motion now?

Mr. Summers: Yes. Very briefly, Your Honor, I want to move to strike from the testimony of this witness all testimony which is in contradiction of the interrogatory, or, rather, which is in contradiction to petitioner's answer to the interrogatory that I read to the Court before, wherein the witness indicated that he could see that the visibility was in excess of that fixed by the petitioner in its answer to that interrogatory. And also wherein the witness has testified to unexpected or unanticipated

(Testimony of James B. Lawton.)

tidal currents. The question and answer with respect to visibility is this,

“Q. What was the condition of visibility as [2455] to range?

A. Estimated from one to two miles as to unlighted sizable objects”.

Then this question and answer?

“Q. Were all of such conditions usual or unusual?

A. Petitioner is unable to state with accuracy whether the conditions at the time of stranding, as stated in the foregoing answer, were usual or unusual, but considering the locality; the season of the year; time of day and state of the tide such conditions were such as might be reasonably anticipated or expected”.

Hence claimants' motion is to strike from the testimony of this witness any testimony with respect to tides not expected or not calculable and also visible in excess of the answer in the interrogatory.

The Court: Motion denied.

Mr. Summers: Exception.

The Court: Exception allowed.

Mr. Pellegrini: At this time I wish to make an offer of proof as follows: I wish to show that on May 24, 1935, before the Steamboat Inspectors, at the investigation of the wreck of the Steamship “Denali”, this witness testified as follows:

(Testimony of James B. Lawton.)

“Q. Do you identify that writing as your own?

A. No, sir, I believe that is the second mate's.

Q. Is this your writing (designating)?

A. Yes, sir, that's my writing.

Q. When the vessel struck it was steering North [2456] $\frac{3}{4}$ West?

A. Yes, sir.

Q. How do you con the compasses?

A. We knock when the vessel is on her course.

Q. The man says, 'Right on', or something of that sort?

A. Yes, sir.

Q. How long do you do that?

A. Three or four times.

Q. You are positive there was no error in conning the course between the standard compass and the steering compass?

A. Yes, sir.

Q. The pilot house compass is North $\frac{3}{4}$ West?

A. Yes, sir.

Q. You identified that by tapping?

A. Yes, sir.

Q. And the man at the wheel responded, so you knew that he got it, is that right?

A. Yes, sir''.

(Testimony of James B. Lawton.)

The Court: The offer is refused.

Mr. Pellegrini: Exception.

The Court: Exception allowed.

Mr. Long: Anything further, Mr. Ryan?

Mr. Ryan: No.

The Court: Be as brief as possible, if you will,
Mr. Long.

Mr. Long: I will. Counsel has read pieces and parts of many questions and answers, and I think that it is only fair, not only to Your Honor, but to the [2457] witness, that the entire answers be read and brought out clearly.

The Court: Proceed.

Redirect Examination

By Mr. Long:

Q. Mr. Lawton, you testified at the trial of Captain Obert, following the investigation which was made——

Mr. Ryan: (Interposing) May I make a motion to strike from the record that remark by counsel about unfairness? It was perfectly proper, this examination of the witness that I made.

The Court: Yes. The motion is granted, and the remark is stricken, and I will say this, Mr. Long, it is only where counsel in cross examining called the witness' attention to some statement that the record showed that he made at the trial, or investigation before the United States Steamboat Inspectors—it is only in connection with that that I will

(Testimony of James B. Lawton.)

permit you to read anything further or call his attention to anything further.

Mr. Long: I realize that, Your Honor, and I have gone over the record carefully last evening to make that very clear.

The Court: Proceed.

Q. (By Mr. Long) Now, you testified at Captain Obert's trial when he was tried for negligence in the stranding of this vessel, is that right?

A. Yes, I did. [2458]

Q. And that was the subject of inquiry at that particular time, wasn't it, by the Steamboat Inspectors?

Mr. Summers: That is not redirect, and I object to that.

The Court: Objection sustained.

Mr. Long: I was trying, Your Honor, just to bring out the full background of this.

The Court: Well, it has already been brought before the Court and the witness, and no further preliminaries are needed.

Q. (By Mr. Long) You were asked by Mr. Ryan on cross examination whether or not he made entries in the log book, and under whose direction you made them?

A. Yes.

Q. Now, I will ask you if at the time of the trial of Captain Obert you testified as follows, or substantially as follows:

(Testimony of James B. Lawton.)

“Q. Do you identify that log book?

A. Yes, sir.

Q. Whose writing is that?

A. That’s mine, sir.

Q. Who directed you to make those entries designating)?

A. The pilot on watch, Mr. Obert.

Q. You made no entries there on your own initiative?

A. No, sir, I took orders from Mr. Obert.

Q. You made no entries in that book unless Mr. Obert told you to?

A. No, sir”. [2459]

Did you or did you not so testify in words or substance?

A. Yes, I did.

Q. And is or is not that the fact?

A. Yes, that is the fact.

Q. Now, counsel asked you—Mr. Ryan read from the transcript of the testimony at the trial of Captain Obert with respect to negligence in the stranding of this vessel a series of questions concerning the time that the vessel was on the course North. I want to call your attention to the questions that he asked you, and then call your attention to the following subsequent questions and answers.

“Q. How long did she stay on that course North, about fifteen minutes?

A. Something like that, fifteen or twenty minutes.

(Testimony of James B. Lawton.)

Q. Can you find any change of that in the log?

A. No, sir.

Q. Why did the pilot change for fifteen minutes, do you know?

A. The tide was there and to keep her off the reef.

Q. To haul her out a little?

A. Yes, sir”.

Mr. Summers: I object to that, if Your Honor please, on the ground that that is not proper re-direct. It does not explain the question and answer that was asked by Mr. Ryan.

The Court: Mr. Long, what phase of it does it seem [2460] to you to clear up?

Mr. Long: Well, counsel just read the first two or three questions that I have just read. He did not read the question, “Why did the pilot change for fifteen minutes, do you know?” which was part of the whole substance of which the inspector was interrogating this witness about. The first three parts of it mean nothing without the last.

The Court: You have read them all together?

Mr. Long: I read them all together, yes. That is my only purpose.

The Court: Very well. And you are closing with this last, additional statement?

Mr. Long: That is right, Your Honor.

The Court: Then the objection is overruled. Was it answered?

(Testimony of James B. Lawton.)

Mr. Long: I do not recall that it was. I will ask the witness.

Q. (By Mr. Long) Did you or did you not so testify, in substance and in effect?

A. As far as I remember I did, sir.

Q. Now, counsel interrogated you concerning certain statements here about the visibility. I will ask you if you didn't testify in substance or in effect at the trial of Captain Obert for negligence with reference to the stranding of this vessel substantially as follows:

“Q. How could you see, was it good?

A. The visibility was fairly good ahead.

Q. Could you see the land on your starboard beam? [2461]

A. Yes, sir.

Q. Could you see Dundas Island?

A. Yes, sir”.

Did you or did you not so testify, in substance?

A. Yes, as I remember, I did.

Mr. Summers: What was the answer?

(Answer read)

Q. (By Mr. Long) Isn't that the fact; is that true?

A. That is the fact, yes, sir.

Q. Now, at the same trial of Captain Obert, concerning the atmosphere, counsel examined you on cross examination and did you or did you not testify as follows, substantially,—did you or did you

(Testimony of James B. Lawton.)

not testify substantially in words and substance as follows:

“Q. The atmosphere was clear, wasn’t it?

A. Yes, sir”.

Did you so testify?

A. Yes, sir.

The Court: I did not get the witness’ answer.

A. Yes, sir.

The Court: All right.

Q. (By Mr. Long) Now, counsel asked you on cross examination—he read you this question from the investigation which was made prior to the time of the trial of Captain Obert for negligence—

“Q. How was it right ahead?

A. Hazy on both sides.”

Did you testify substantially as follows, immediately following that and in explanation of that,

“Q. How far could you see in your opinion?

[2462]

A. Eight miles.

Q. On the surface of the water?

A. Yes, sir”.

Did you not so testify?

A. Yes, I did.

Q. Now, counsel referred to what the pilot house compass was after you had conned the course as Mr. Pellegrini even mentioned. After you had conned the course.

The Court: Mr. Pellegrini did not propound any questions, as I recall.

(Testimony of James B. Lawton.)

Mr. Long: Very well. I will direct that entirely to Mr. Ryan's questions. Strike the reference, Mr. Reporter, to Mr. Pellegrini.

Q. (By Mr. Long) The question was, following a discussion between yourself and the Inspector of question and answer as to conning courses and putting the ship on her course, and the question was asked you,

“Q. The pilot house compass is North $\frac{3}{4}$ West?

A. Yes, sir”,

to what time does that refer?

A. As I recall it that refers to the time that we originally went on that course, when Triple Island Light was abeam at 12:06 A. M.

Q. Now, counsel asked you in connection with—interrogated you in connection with the trial and investigation and asked you the following question,

“Q. Mr. Lawton, have you any information which you wish to give to the Board relative to this case?

A. No, sir, I haven't”. [2463]

Did you or did you not testify immediately following that as follows:

“Q. What in your opinion was the cause of this accident?

A. The best I can assume was the tide”.

Did you or did you not so testify at that time?

A. Yes, I believe I did.

(Testimony of James B. Lawton.)

Q. And in connection with the trial of Captain Obert for negligence in the matter of the stranding of the vessel, on that same occasion, did you or did you not testify as follows—

“Q. Did you see this land—”

Mr. Ryan: (Interposing) When is this?

Mr. Long: This is at the trial.

The Court: At the trial?

Mr. Long: Yes. This is at the trial, at page 8. I have not the official copy, so I cannot tell you where that appears on your copy.

The Court: Is it near the end of the transcript?

Mr. Long: Yes. Just before Inspector Campbell asked a couple of questions. I think it should be on page 9 of your copy.

Q. (By Mr. Long):

“Q. Did you see this land before the vessel struck Zayas Island?

A. Yes, sir.

Q. How did it bear?

A. It was on the port bow, sir.

Q. How do you account, Mr. Lawton, for the ship striking when you could see the land?

[2464]

A. Well, I don't know, sir, except for the tide, we seemed all clear, seemed to be in the middle of the channel”.

Did you or did you not so testify?

A. Yes, sir, I did as I recall it.

(Testimony of James B. Lawton.)

Q. And is it or is it not the fact?

A. That is the fact.

Q. Now, in connection with your answers to counsel's questions, about the vessel being late leaving Seattle, you were asked the question,

“Q. Was it behind time leaving Seattle?

A. Yes, she was a little late”.

Then did you in answer to the following question testified as follows,

“Q. Was that ship operated on a regular schedule?

A. No, sir.”

Is that correct, and did you so testify?

A. I believe that I recall that, sir.

Q. Well, what is the fact? Was the Steamer “Denali” on a regular schedule on this voyage?

Mr. Summers: That is not proper redirect, and I object to that.

The Court: If you know.

A. No, sir, it was not.

The Court: Objection overruled.

Mr. Summers: Exception.

The Court: Exception allowed.

At this time we will take the noon recess to 2:00 P. M.

(Whereupon an adjournment was taken at 12:00 M., November 10, 1937, to 2:00 P. M., November 10, 1937.) [2465]

(Testimony of James B. Lawton.)

Wednesday November 10, 1937,

2:00 o'clock P. M.

The Court: You may proceed with the trial. Let the witness Mr. Lawton resume the stand.

JAMES B. LAWTON

resumed the stand for further examination.

Mr. Ryan: If Your Honor please, counsel for Petitioner demanded the production of the protest on this vessel, and in response to that demand I now produce a duly certified copy, certified by the Notary Public who extended the protest, the original being required to be kept in the office of the Notary Public, and this protest having been made or extended on May 23, 1935, and having been, according to the Notary Public's certificate, signed by Thomas E. Healy, Master; G. W. Slater, Chief Engineer; W. Cleasby, Chief Mate; Frank Hoseth, Radio Operator; and J. B. Lawton, Third Officer.

Mr. Long: That is not the original.

Mr. Ryan: I just explained that I do not have the original. The original is in the possession of the Notary Public, and is required to be kept there. I have produced here a copy which has been duly certified by that Notary Public as being a true copy of the original on file.

The Court: The record will show the statements by counsel. You may proceed.

Mr. Ryan: I now offer in evidence the chart marked [2466] as Claimants' Exhibit A-11 for Iden-

(Testimony of James B. Lawton.)

tification, on which this witness, Mr. Lawton, marked the courses, and I ask that it be received in evidence as Claimants' Exhibit A-11.

The Court: With respect to that, and as I understand the testimony of the witness, the witness is now being inquired of about that on redirect examination. Do you have anything further?

Mr. Long: I think I have covered everything on redirect, Your Honor.

The Court: Very well. Are there any further questions to be propounded to this witness?

Mr. Ryan: No, I think not, Your Honor. I offer in evidence this chart on which the courses and positions of the "Denali" have been laid down by the witness, as Claimants' Exhibit A-11.

Mr. Long: I object to the offer, Your Honor, if it is meant to be shown by this chart, as according to counsel's present statement, that this chart indicates the position of the "Denali" at any time on this voyage, or at any other time. This exhibit simply indicates, without relation to current, tides, or the conditions then existing, purely the approximate line in accordance with the testimony of the witness here this morning. As I recall the matter, it eliminates the essential elements which are important in this case. Insofar as it illustrates exactly what the witness said, based upon the assumption that all the elements are not involved, I have no objection to it for that purpose.

Mr. Ryan: I disagree with the statement made

(Testimony of James B. Lawton.)

by [2467] Mr. Long. I merely want to describe what the chart is. I offer in evidence as Claimants' Exhibit A-11 this chart No. 2828, as marked on it by the Witness Lawton, and I call attention at this time to the fact that the definite position of the "Denali" at the time of the stranding is shown, and the definite position of the "Denali" at 1:30 o'clock a. m. is shown.

The Court: As I understand it, another chart of the same type has been already admitted in evidence.

Mr. Long: That is correct, Your Honor.

The Court: And the same number?

Mr. Ryan: It has the same number, but it has so many marks on it that I do not want to get the lines confused.

The Court: I was about to suggest that the only purpose that I know of for which it would be admissible in evidence, since you already have a chart drawn by the public authority promulgating it, in evidence, would be for the purpose of illustrating the testimony of the witness which he gave touching the matter or data on the map. That is one thing in connection with which its admissibility should be considered.

Mr. Ryan: That is what I am offering it for, Your Honor.

The Court: If that is the purpose of the offer the Court is ready to act upon it.

(Testimony of James B. Lawton.)

Mr. Long: I object to it on the further ground that it is incompetent, irrelevant and immaterial. We are not bound by anything shown on the chart. The questions involving the chart were propounded on a hypothetical [2468] presumption, of which there is no evidence before the Court.

The Court: Claimants' Exhibit A-11 is now admitted in evidence, to illustrate the testimony of the witness who identified it, and who put certain lines on it.

Mr. Long: Exception.

The Court: Exception allowed.

(Chart received in evidence Claimants' Exhibit A-11.)

Mr. Ryan: I want to ask the witness about that protest.

The Court: You may proceed.

Further Recross Examination

By Mr. Ryan:

Q. Did you or did you not, after first being duly sworn, sign this protest that I show you, on May 23, 1935, before Notary Public M. D. Calder, in the City of Seattle, Washington?

Mr. Long: I object to that as not proper cross examination, the original not being produced, under counsel's statement. I object to it as improper recross examination.

The Court: Counsel asked the witness if he signed that particular document.

(Testimony of James B. Lawton.)

Mr. Long: On counsel's own statement there are no signatures on it. This is a copy, if it is a copy.

Q. (By Mr. Ryan) Did you sign that document that I show you, that protest? Not is that your signature at the bottom but did you sign a document which read like that one [2469] right there, or not, under oath, on May 23, 1935?

A. I will answer the same as I answered before; I do not recall signing this or anything else, although I might have.

Q. You do not deny that you did sign it?

A. I do not recall it.

Q. But you do not deny that you did sign it?

A. No; I do not deny it; I do not remember it, that is all.

Q. Will you read it and does it refresh your recollection as to whether or not you made this statement to that Notary Public under oath?

Mr. Long: I object to that as improper redirect examination, Your Honor.

The Court: That objection is overruled.

Mr. Long: It is further objected to on the ground that this is not the original document, and does not purport to be.

The Witness: I am sure I never read anything like that, if that is what you wish.

Q. Do you deny that you stated to the Notary Public, M. D. Calder, in Seattle, on May 23, 1935, the facts that are recited in that protest, over your purported signature?

A. I do not deny it, but I do not recall this article.

(Testimony of James B. Lawton.)

Q. And reading it doesn't refresh your recollection, is that right?

A. No, sir; it does not.

Q. I call your attention particularly to the top of page 2, the first four or five lines, and ask you whether you made those statements of fact to that Notary Public, M. D. Calder on May 23, 1935, in Seattle, under oath? [2470]

A. No, sir; I do not remember that.

Q. Those purport to be statements of fact as to what happened while you were on watch on the bridge of the "Denali", do they not?

A. No.

Mr. Long: I object to counsel testifying, and I have already objected to this document. The original has not been produced, according to my demand. If it is in Seattle it can be produced.

The Court: I think you ought to produce the original, Mr. Ryan, or show some reason why it is not produced.

Mr. Ryan: If the Court please, it is not in my possession, it is not under my control. This protest was extended by their own officers of this ship, and how can they demand the production of it by me, a document that they extended before a notary. They can go to the notary public and get it. Mr. Bogle has taken it and examined it, and shown it to somebody in the back of the room, looked it over, and on that basis, and they having demanded that

(Testimony of James B. Lawton.)

it be produced, and they now having examined it, I offer it in evidence.

Mr. Long: We object to it as incompetent, irrelevant and immaterial.

The Court: For the purpose of the record do you wish to have it marked, Mr. Ryan?

Mr. Ryan: Yes; I ask that it be marked as Claimants' Exhibit A-12.

(Protest marked for identification Claimants' Exhibit A-12.) [2471]

Mr. Long: I also wish to call Your Honor's attention to the following, in connection with my objection, that the certificate mentions nothing about Mr. Lawton, but refers all the way through to T. E. Healy, the master of the "Denali" on May 23, 1935, and that is the only signature on here.

Mr. Ryan: May I reply to that statement by reading the first page?

The Court: Well, Mr. Ryan—

Mr. Ryan: (Interposing) Well, Your Honor, I do not like to have that statement in the record.

The Court: The statement will be stricken, and the matter will be disposed of on the basis that it is a copy.

Mr. Ryan: A copy certified to by the notary public who extended it, on request of the Petitioner's own officers.

The Court: The objection to its admission in evidence is sustained.

(Testimony of James B. Lawton.)

... Mr. Ryan: Exception.

The Court: Exception allowed; and the offer of it at this time is denied.

Mr. Ryan: In view of that may I ask the witness one question?

The Court: Yes.

Q. (By Mr. Ryan) Did you or did you not, on May 23, 1935, in Seattle, after having been first duly sworn to tell the whole truth, state to M. D. Calder, a Notary Public, in Seattle, Washington, as follows—

Mr. Long: Just a minute, please.

Mr. Ryan: I am just going to read it. [2472]

The Court: Mr. Ryan, that has been already been gone into, and when the original demand was made upon you it was made in connection with something that is very much like what you are now trying to do.

Mr. Ryan: I am just laying the foundation for impeaching the witness by the notary public. I am just asking whether on that date he did not make this statement under oath to this man, in Seattle, and if he denies it I am going to prove that he is not telling the truth.

The Court: Haven't you asked him that before?

Mr. Ryan: Not that particular question.

Mr. Long: I submit that he has, and the witness has said at least ten times that he doesn't remember making the statement.

(Testimony of James B. Lawton.)

The Court: I am going to give Mr. Ryan the benefit of this doubt, and I will let him ask the witness the question.

Q. (By Mr. Ryan) On May 23, 1935, after being first duly sworn to tell the whole truth, did you not state to M. D. Calder, a notary public in City of Seattle, as follows:

“At 2:37 A. M. the south end of Zayas Island was abeam. Northerly wind force 2 prevailed, atmosphere hazy. At 2:44 A. M. the vessel suddenly struck a reef running out from Zayas Island about three-quarters of a mile. Engines were stopped but were immediately run full astern in an effort to free the vessel. She would not move.”

Did you or did you not so state, under oath?

A. I do not recall that, or any other part of that.

Q. Do you deny that you stated that under oath at that [2473] time to the notary public?

A. I say I don't recall.

Mr. Long: I submit that is not inconsistent, Your Honor, and he cannot be impeached. He so testified here today and yesterday.

The Court: The record will stand as made. Does this complete the examination of this witness?

Mr. Ryan: Yes, Your Honor.

The Court: You may be excused from the stand, Mr. Lawton. Call your next witness.

Mr. Long: We will call Mr. Tell.

(Witness excused.)

EMIL TELL

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Long:

Q. Will you state your full name to the Court, please?

A. Emil Tell.

Q. Where do you live, Mr. Tell?

A. Gatewood Hotel, Seattle, Washington.

Q. What is your business or occupation?

A. Seaman.

Q. Do you hold any certificate issued by the Department of Commerce, United States Steamboat Inspection and Navigation Service?

A. A. B. and lifeboat certificate.

Q. How many years have you been going to sea?

[2474]

A. 30 years.

Q. Briefly, what has your sea experience been, Mr. Tell?

A. Sailing vessels and steamships.

Q. How many years have you been serving as quartermaster on ships, steering ships?

A. 25 years.

Q. Have you had any service in Alaskan waters as quartermaster or helmsman on vessels?

A. About nine years.

Q. Were you a member of the crew of the steamship "Denali" in 1935?

(Testimony of Emil Tell.)

A. Yes, sir.

Q. In what capacity were you a member of her crew?

A. A. B.

Q. When and where did you join the vessel?

A. In Seattle.

Q. Where was the ship when you joined her?

A. West Seattle.

Q. Do you remember the date?

A. The 13th of May.

Q. What time of day?

A. 6:00 a. m.

Q. Who sent you to the vessel?

A. From the Sailors' Union hall.

Q. Are you a member of the Sailors' Union of the Pacific Coast?

A. Yes, sir.

Q. During the time that the vessel shifted around the harbor in Seattle did you at any time act as quartermaster and helmsman? [2475]

A. Yes; from the coal bunkers over to the oil dock.

Q. What sea watch did you have on the ship?

A. From 12:00 midnight, until 4:00 in the morning, and 12:00, noon, until 4:00 in the afternoon.

Q. How many hours a day were you on duty?

A. Eight hours.

Q. Do you remember the date those sea watches were set?

A. At 8:00 o'clock in the morning, May 16th.

(Testimony of Emil Tell.)

Q. Do you recall the date that the vessel sailed from Seattle?

A. At 6:45 a. m., on the 16th.

Q. Now, when did you first go on duty on the 16th, Mr. Tell?

A. When we left the dock.

Q. What were your duties at that time?

A. Securing the gear, deck gear, and the deck load.

Q. When on May 16th did you go on wheel watch, as helmsman of the ship?

A. At 12:00, noon.

Q. You stand a four-hour watch twice a day, as I understand your testimony?

A. Yes.

Q. Is that four-hour watch divided in any way?

A. Two hours apiece at the wheel.

Q. Do you have a watch partner?

A. Yes. [2476]

Q. During the day time what did you do in your other two hours on the watch? When you were not on the wheel—on the day watch?

A. I did ship's work.

Q. You did ship's work?

A. Yes, sir.

Q. At night what did you do on the two hours that you were not at the wheel?

A. Stood look-out.

Q. Now, during the time that you were at the wheel as helmsman on the Steamer "Denali" dur-

(Testimony of Emil Tell.)

ing your voyage to Alaska tell us, if you will, how the vessel steered?

A. She steered good.

Q. What can you say as to the compass that you were looking at—the steering compass or the pilot house compass?

A. She was in perfect order.

Q. Did you observe any defects in the compass?

A. No.

Q. Tell us what the condition of the compass card was as you saw it—card was as you saw it—was it clear or dull or bright, or how?

A. The face of it, you mean?

Q. Yes, the compass card.

A. Yes, sir, she was clear.

Q. Were there any bubbles in the compass that you could see?

A. No.

Q. How was the steering or pilot house compass card marked—in points or degrees?

A. Degrees and points.

Q. Both? [2477]

A. Yes.

The Court: Let your answer be audible so that all persons can hear you.

A. Yes.

Q. Now, what time did you get on watch on the early morning of May 19th?

A. 12:00 midnight.

(Testimony of Emil Tell.)

Q. And from 12:00 midnight until what time—until 2:00 o'clock what did you do?

A. Stood lookout.

Q. And after 2:00 o'clock what were your duties?

A. At the wheel.

Q. As helmsman?

A. Yes, sir.

Q. Is that also referred to as quartermaster?

A. Well, yes.

Q. Now, when you came on watch at 2:00 A. M. at the wheel, tell us what you did before actually coming up to the bridge?

A. I read the log at 2:00 o'clock, or a little before 2:00—a minute or two before.

Q. When you speak of "the log" what do you refer to?

A. To the patent log.

Q. Also called the taffrail log?

A. Yes, sir.

Q. And to whom did you give the log reading?

A. I reported it to the third mate.

Q. And who was the third mate?

A. Mr. Lawton.

Q. And who else was on watch at that time?

[2478]

A. Pilot Obert.

Q. By the way, had you ever sailed with Pilot Obert before on other ships, or on this ship?

A. Yes, I have, on other ships.

Q. Did you ever sail with Mr. Lawton before?

(Testimony of Emil Tell.)

A. Yes.

Q. Now, while on look-out, and at approximately 1:45, what, if any, land could you see?

A. I could see land on either bow.

Q. Do you know what land that was?

A. Yes.

Q. Tell us.

A. Dundas Island on the starboard side and Zayas Island ahead.

Q. What time did you leave the look-out, approximately?

A. At ten minutes to two.

Q. And what time did you arrive in the wheel house to take over your watch on this occasion?

A. Two o'clock.

Q. Did you relieve anybody at the wheel?

A. I relieved by partner who was at the wheel from twelve to two.

Q. Approximately what was the visibility while you were on lookout, and just before you left the lookout, around ten minutes to two?

A. A little hazy on the shore line.

Q. Had you seen any lights while you were on lookout from twelve to two?

A. No, sir.

Mr. Ryan: What was the answer. [2479]

A. No, sir.

Q. (By Mr. Long) Do you know what I refer to when I say "lights"?

(Witness does not answer)

(Testimony of Emil Tell.)

Q. Had you seen any lighthouses; let us put it that way.

A. I didn't see any while I was on the lookout.

Q. Well, did you see any when you read the log?

A. Yes, sir.

Q. Do you know what light you saw?

A. Triple Island Light.

Q. Which side of the vessel was it on?

A. On the starboard side.

Q. Now, when you took over the wheel as quartermaster or helmsman at 2:00 o'clock what course was the vessel steering by pilot house compass?

A. North.

Q. From whom did you receive that course?

A. From the man that I relieved.

Q. What, if any orders did the pilot or third mate give you with reference to the course at that time?

A. He gave them the course after he gave it to me. He repeated the course to the third mate.

Q. Who repeated the course to the third mate?

A. The man that I relieved.

Q. Well, what, if anything, did Pilot Obert or Mr. Lawton tell you with reference to the course when you took over the wheel?

A. Nothing.

Q. How long did you steer that course North?

A. Twenty-five minutes. [2480]

(Testimony of Emil Tell.)

Q. During that time did—what could you see ahead—what land, if any, could you see ahead?

A. I could see Zayas Island.

Q. And how did it bear, approximately?

A. Oh, heading like the inshore line—the inshore coast—the east side of Zayas Island.

Q. What other land could you see?

Mr. Ryan: Will you read that last answer?

(Answer read as follows:

“Oh, heading like the inshore line—the inshore coast—the east side of Zayas Island”.)

Mr. Long: Will you speak up a little louder, Mr. Tell?

The Court: The first two words in that statement were what?

(Answer re-read)

The Court: “Like” is the word, is it not?

The Witness: Yes, like the inshore line.

Q. (By Mr. Long) I will ask you another question, Mr. Tell, so that it will be clear. At that time how did Zayas Island bear, if you know? Just describe it in your own words.

A. She was heading for the east coast or east shore line of Zayas Island.

Q. Very well. What other land could you see?

A. Dundas Island.

Q. Could you see the channel between the two islands?

A. Yes, sir.

Q. At 2:00 o'clock when you came on watch, how was the ship heading with reference to the channel between the two [2481] islands, as you recall?

(Testimony of Emil Tell.)

A. She was heading for the east side of Zayas Island.

Q. All right. Now, you steered that North course twenty-five minutes, you say?

A. Yes, sir.

Q. What, if any, orders did you receive from the pilot at about 2:25?

A. To port the helm to make the swing shift to the right.

Q. Which way with relation to the east and west?

A. East.

Q. Just tell us in your own words just what the pilot said and what you did.

A. He told me to port, and I turned the wheel to port, the ship swinging to the right, and he said, "Steady", and I steadied her up on North $\frac{3}{4}$ East.

Q. Did Mr. Obert at that time or at any other time give you any magnetic course to steer?

A. No.

Q. Did any other officer—Mr. Lawton?

A. No.

Q. What was the pilot doing?

A. He was standing at the window on the port side of the pilot house.

Q. After you made this change to the right, steadied the course and steadied the heading, what was the heading by pilot house compass?

A. North $\frac{3}{4}$ East.

(Testimony of Emil Tell.)

Q. Now, returning again to 2:00 o'clock, while you were on the north course—on the north heading, tell us what, if anything, was done by the third officer? [2482]

A. He was checking the course at 2:00 o'clock.

Q. When you say that he was checking the course at 2:00 o'clock, what do you mean?

A. He went on top and checked it by the standard compass, and knocked when he was on, and I knocked when I was on. I repeated the knock.

Q. Is that the customary method and practice of checking the compasses or conning the compasses as it is called?

A. Yes, sir.

Q. Now, at that time did Mr. Obert give Mr. Lawton any orders with reference to entering that north heading in the log book in your presence?

A. Yes. The third mate asked him if he should enter that course in the log book, and the pilot said, "No".

Q. Very well. Now, about 2:25, when the vessel's head was all to the right, or eastward, tell us what, if any, orders the pilot gave the third mate with reference to making any entries in the log book?

A. He told him to take—to stand by and take a bearing off the south end of Zayas Island.

Q. All right. What was done?

A. Well, he sent a man back aft to stand by the log, and he took the bearing of Zayas Island.

(Testimony of Emil Tell.)

Q. At the time that that bearing was taken, Mr. Tell, what was the ship's heading?

A. North $\frac{3}{4}$ East.

Q. Can you recall about what time that was?

(Witness does not answer)

Q. Can you recall about what time that was that the bearing was taken? [2483]

A. Oh, about 2:25, I guess—somewhere around there.

Q. By the way, Mr. Tell, how did you fix the time when the ship was hauled to the right, or to the eastward $\frac{3}{4}$ of a point, or around to the north $\frac{3}{4}$ East?

A. At 2:35.

Q. I say, how did you fix that time, or do you fix that time?

A. Well, the third mate was still up checking her run, and we struck five bells.

Q. And what are five bells?

A. 2:30.

Q. Had you already made the swing before the third mate went up to check her run?

A. Yes.

Q. After the bearing was taken from Zayas Island what occurred? What did you do, or what did the ship do?

A. She took a swing to the right about three-quarters of a point.

Q. From what cause?

A. From the current.

(Testimony of Emil Tell.)

Q. And what did you do?

A. I brought her back again to her course.

Q. And what was her heading at that time, after you brought her back?

A. North $\frac{3}{4}$ East.

Q. And what happened after that?

A. She hit.

Q. Do you know what time—do you know about what time she struck?

A. 2:44. [2484]

Q. Now, Mr. Tell, after the ship had been swung to the right and steadied on North $\frac{3}{4}$ East, tell us, if you will, how the ship appeared to be heading with reference to Zayas and Dundas Islands, and the channel between the two.

A. She appeared to be in mid-channel.

Q. What could you see of Zayas Island at about that time?

A. Well, Zayas Island was on her starboard bow then.

Q. Zayas Island?

A. On her port bow, I mean.

Q. Yes.

A. I beg your pardon.

Q. Where was Dundas Island?

A. On the starboard, sir.

Q. What would you say as to the visibility at about that time?

A. The visibility was good ahead, but hazy along the shore lines.

(Testimony of Emil Tell.)

Q. Now, from the time that you came on watch, Mr. Tell, until the time that the vessel struck, what, if any, orders or magnetic courses did the pilot give you to steer?

A. None.

Q. What was he doing during that period with reference to navigation of the ship?

A. He was piloting the ship.

Q. Were you steering any magnetic course given you by the pilot?

A. No, sir. But I had to have something to go by.

The Court: What was your answer? [2485]

A. No, sir.

The Court: Then you added something.

A. Yes. When he tells me to port the wheel and he says, "Steady", well, I have to have something to go by in order to steer the ship.

The Court: All right. Ask him another question.

Q. (By Mr. Long) Now, at the time that the vessel's head was swung to the right, say about 2:25, what, if any, conversation was had between the third officer and the pilot relative to this entry of North $\frac{3}{4}$ East in that book?

A. The third mate asked the pilot again.

Q. Yes.

A. If he should make an entry in the log book, and the pilot said, "No".

(Testimony of Emil Tell.)

Q. Now, Mr. Tell, did you make any written memorandum of the course of the ship's headings from the time that you steered, when you came on the ship's watch, until the time of the stranding?

A. I did.

Q. When?

A. Immediately after I left the pilot house.

Q. When--where did you make it?

A. In my union book.

Q. Have you got that here and can you produce it?

A. Yes (handing book to Mr. Long).

Mr. Long: Will the clerk mark this with a number? Also put a couple of rubber bands around those pages because they are worn. [2486]

(Emil Tell's union book marked for identification Petitioner's Exhibit 60.)

Mr. Ryan: May I see it?

Mr. Long: As soon as I have identified it.

Mr. Ryan: You have shown it to the witness.

Mr. Long: I have not shown it to him. He handed it to me. I will have it identified for counsel.

Q. (By Mr. Long) Handing you—

Mr. Ryan: (Interposing) If Your Honor please, in view of the fact that the witness has seen it, and he is being examined from it, may I examine it first?

Mr. Long: I am going to identify it first.

(Testimony of Emil Tell.)

The Court: You may not see it until after counsel gets through interrogating the witness concerning it. After that you may see it, Mr. Ryan.

Q. (By Mr. Long) Handing you, Mr. Tell, what has been marked Petitioner's Exhibit 60 for identification, I will ask you, first, what is this?

A. This is my union book.

Q. And in whose handwriting is it?

A. Mine.

The Court: Meaning your handwriting?

The Witness: Yes, sir.

The Court: Is that what you mean?

The Witness: Yes, sir.

The Court: Then whose book is it?

The Witness: It belongs to me.

Q. (By Mr. Long) What book is it? Can you identify the book?

A. Yes, by my name. [2487]

The Court: He means to ask you what kind of a book it is. What do you call it?

The Witness: A union book.

The Court: All right.

The Witness: A membership book of the union.

Q. (By Mr. Long) Does it bear your name and signature?

A. Yes.

Q. Does it bear the seal of the International Seamen's Union of the Pacific?

A. Yes, sir.

(Testimony of Emil Tell.)

The Court: Direct his attention to what you want to ask him from that book.

Mr. Long: I will.

Q. (By Mr. Long) I notice here some writing (indicating). Whose writing is that?

A. That is my writing.

Q. When was that made?

A. Immediately after I left the pilot house.

The Court: There was some question answered at the very beginning, before he took this book out of his pocket. Why do you not get right at that if what you are doing now is to authenticate—is asking him questions for the purpose of authenticating the data—the written data?

Mr. Long: Yes.

The Court: In other words, proceed and get at it quickly.

Mr. Long: Yes, I will, Your Honor.

Q. (By Mr. Long) You say that this was made immediately after you left the pilot house? [2488]

A. Yes, sir.

Q. How soon was that after the vessel struck?

A. I cannot say for sure.

Q. Why did you make those entries in this book?

A. Because the third mate asked the pilot if he should enter in the log book, and he said “No”, and it was not done.

Q. How do you know that it was not done?

A. Well, he told him not to do it.

(Testimony of Emil Tell.)

Q. What are these entries in your handwriting? Will you read them off, please?

The Court: He should read them to himself because this book is not yet in evidence.

Mr. Long: All right, Your Honor.

Q. (By Mr. Long) Read it to yourself.

A. Yes, I have.

Mr. Long: I now offer the book in evidence, Your Honor.

The Court: Will you let counsel have a chance to inspect it?

Mr. Long: Yes. I now offer in evidence Petitioner's Exhibit 60.

Mr. Pellegrini: While we are examining the book he might go on asking further questions.

The Court: I would prefer to give you further time to examine it, Mr. Pellegrini.

Mr. Ryan: If the Court please, the witness has been already asked what his knowledge was, and his recollection, and he has given it freely without reference to the book, so that the book is in no sense necessary to [2489] aid him in refreshing his recollection.

Mr. Long: I will ask him a further question.

Mr. Ryan: And it is objected to on the ground that it is a self-serving declaration—a statement not made by a person authorized to bind or represent the petitioner, and on the further ground that if this is any contemporaneous, written record, it should have been produced when counsel for peti-

(Testimony of Emil Tell.)

tioner was directed by the Court to produce the memorandum at the time, and records at the time regarding the movements of this vessel as shown in any books within their possession or control.

The Court: Before ruling finally on the objection, the Court sees nothing in the evidence that makes its admission material or proper at this time.

Mr. Long: I feel, Your Honor, that it is part of the immediate transaction—part of the *res gestae* of this whole circumstance.

The Court: I do not know of anything that gives you the right to have it admitted in evidence.

Mr. Long: Well, I will ask him some further questions.

The Court: Proceed.

Q. (By Mr. Long) Have you refreshed your recollection from this particular book and notes made at the time?

Mr. Ryan: I object to that. The witness has been asked the direct questions as to what course he had been steering, and he has given the magnetic. He has not referred to the book at all.

The Court: Objection sustained. [2490]

Mr. Long: I feel, Your Honor, that this—

The Court: (Interposing) Ask him a question and see if he can answer it.

Mr. Long: I have not done it—

The Court: (Interposing) Ask him a question which is material in this case—material on the petitioner's case—material in connection with the exam-

(Testimony of Emil Tell.)

ination of this witness. It may be that the witness does not need this document in that connection at all. If you have any further questions on direct examination to propound to him, proceed.

Mr. Long: All right, and I want this book admitted in evidence, if Your Honor please, and I have laid the foundation for doing so.

The Court: The offer is denied.

Mr. Long: Then I desire to make an offer of proof.

The Court: Proceed.

Mr. Long: Preliminary to that I want to ask two or three questions.

The Court: Proceed.

Q. (By Mr. Long) When were these entries made, Mr. Tell?

Mr. Ryan: That has already been answered.

A. Immediately after I left the pilot house.

The Court: Objection sustained.

Q. (By Mr. Long): Are they in your own handwriting?

A. Yes, sir.

The Court: That has already been covered.

Mr. Long: All right, Your Honor.

Q. (By Mr. Long): Have you used your book to refresh your mind as to how this accident happened? [2491]

A. No, sir.

Mr. Long: I now offer this Petitioner's Exhibit 60 in evidence, if Your Honor please.

Mr. Summers: I object to that.

(Testimony of Emil Tell.)

The Court: The objection is sustained and the offer is denied.

Mr. Long: Exception.

The Court: Exception allowed.

Mr. Long: I want to make an offer of proof, if Your Honor please.

The Court: That is a different matter. You offered the exhibit in evidence.

Mr. Long: I understand that Your Honor has ruled, and I want to except to Your Honor's ruling at this time, and I want to make an offer of proof concerning it.

The Court: Exception allowed, and you may now make your offer of proof.

Mr. Long: At this time, with the witness Emil Tell on the stand, and under the circumstances heretofore related, the petitioner offers in evidence, and offers to prove by this witness that immediately following this accident, as a part of the *res gestae* of this transaction, he made these entries in his own handwriting, the entries being as follows:

“Steering from 2:00 to 2:25 North; from 2:25 to 4:44 North $\frac{3}{4}$ East, compass bearing North half East”.

In connection with that offer of proof I also want to ask the witness whether I have read these memoranda correctly. Have I, Mr. Tell? [2492]

Mr. Summers: I object to that.

(Testimony of Emil Tell.)

The Witness: Yes, sir.

Mr. Summers: That is not proper on the offer. That is going around the Court's ruling—disobeying the Court's ruling.

Mr. Long: I am not trying to disobey the Court's ruling. I think the Court should have this before him.

The Court: That objection is overruled, but if you are offering that written evidence which you have just now read, as your offer of proof, at this time——

Mr. Long: (Interposing) Correct.

The Court: (Continuing) At this time such offer of proof is denied by the Court.

Mr. Long: To which may we have an exception, Your Honor?

The Court: Exception allowed, without, however, ruling, or intending to rule upon your asking this witness any particular question on direct examination which is material to the petitioner's case.

Mr. Long: Well, I will continue with that then.

The Court: Proceed.

Q. (By Mr. Long) What, Mr. Tell, was the ship's head after she struck the reef—what was her heading?

A. North $\frac{1}{2}$ East.

Q. Now, from the time that you came on watch, at 2:00 A. M., until the time that the vessel struck, tell us whether or not the pilot at any time ever

(Testimony of Emil Tell.)

looked into the compass—the steering compass—in your presence?

A. No.

Mr. Long: I believe that is all, Your Honor.

[2493]

The Court: You may cross examine.

Cross Examination

By Mr. Ryan:

Q. You were examined as a witness by the United States Steamboat Inspectors at the investigation of this case on May 24, 1935, were you not?

A. Yes, sir.

Q. You did not tell the Steamboat Inspectors anything about the “Denali” being on a heading of North $1\frac{1}{2}$ East, or North $\frac{3}{4}$ East, at the time of the stranding, did you?

A. I did not.

Q. You never told the Steamboat Inspectors at that time anything about this book which you say that you made a memorandum in at the time, did you?

A. No.

Q. You never told the Steamboat Inspectors at that time anything about these courses that you knew in fact the “Denali” was steering from 2:00 A. M. to 2:44 A. M. on May 19, 1935, did you?

A. No.

Q. Why didn't you?

A. I wasn't asked.

Q. That is your only explanation?

(Testimony of Emil Tell.)

A. Yes, sir.

Q. All right. Now, you say that you had to have something to steer by. What do you mean by that?

A. Steer by a compass.

Q. Why, certainly. You have to have the compass to steer by, don't you? [2494]

A. That was with reference to that statement—well, I don't know just what it was with reference to——

Q. (Interposing) Certainly.

A. (Continuing)—that Mr. Long made.

Q. So whenever the order was given to steady her, you steadied her on the compass course that was marked on the compass right in front of you, didn't you?

A. The pilot would know that.

Q. Well, wouldn't you?

A. Yes, sir.

Q. In other words, you were relying absolutely on the compass at all times until the ship actually struck the reef, weren't you?

A. Yes, sir.

Mr. Long: What was that answer?

The Witness: Yes, sir.

Q. (By Mr. Ryan) That is the only thing that you have to steer by, a definite compass course with the lubber's line there in front of you, isn't that right?

A. Yes, sir.

(Testimony of Emil Tell.)

Q. And at 2:00 o'clock the helmsman whom you relieved told you that the ship was steering a course North, didn't he?

A. Yes, sir.

Q. By the compass that you were using right in front of you?

A. Yes, sir.

Q. And you continued on that course, North, by compass until 2:25 A. M., didn't you?

A. Yes, sir.

Q. And then you changed the course and steered a course [2495] North $\frac{3}{4}$ East from 2:25 up until 2:44 A. M., when the vessel struck the reef, didn't you?

A. Yes, sir.

Q. So that at all times you were steering a compass course, weren't you?

A. Yes.

Q. You were not just trying to keep in the middle of the channel. You were trying to keep on the compass course on which you had been told to steady when the pilot told you to steady, isn't that right?

A. Yes, that is right. [2496]

Q. (By Mr. Ryan) Wasn't the compass of the "Denali" slow in answering when you made a turn?

A. No, sir.

The Court: The answer was "No", as I understand it. Am I correct?

The Witness: Yes, sir.

(Testimony of Emil Tell.)

Q. Wasn't the "Denali" steering a little slow?

A. She was slow coming back, if she went over, like in tide-rips.

The Court: "Like in tide-rips", is that what you said?

The Witness: Yes, sir.

Q. You never took the compass apart or examined it, or made any examination of it, did you?

A. No.

Q. Did you or did you not testify before the United States Steamboat Inspectors, at the investigation on May 24, 1935, in Seattle:

"Q. In your experience as helmsman would you say that the 'Denali' was steering or answering its helm as it should?

A. Yes. She was a little slow."

Did you so testify?

A. I did.

Q. What did you mean by "a little slow" when you gave that testimony?

A. I explained that a little while ago.

The Court: Explain it again.

The Witness: She was slow at times, in tide-rips.

The Court: In tides and tide-rips?

The Witness: In tide-rips. [2497]

Q. You didn't say anything about that to the Steamboat Inspectors, did you, that she was only slow in tides and tide-rips?

A. No.

(Testimony of Emil Tell.)

Q. Why didn't you?

A. That is all they asked me.

Q. They asked you just generally how she steered, and you said she was a little slow, you just generalized it all the time, and now you limit it to tide-rips, and I want to know why you are now trying to limit it to tide-rips when you didn't do it before the Steamboat Inspectors.

A. I was referring to that.

Q. But you didn't tell them so?

A. No, sir.

Q. How far, in your opinion, could you really see when you were steering the "Denali"?

A. I couldn't tell.

Q. Do you know what course by standard compass the "Denali" was steering?

A. No.

Q. Do you know what course by steering compass the "Denali" was steering at any time excepting the times you have testified to here?

A. I don't recall the courses. I was steering before.

Q. Did anybody ever tell you what courses the "Denali" was steering by either standard or steering compass?

A. No.

Q. Was there any sea running when this accident happened?

A. No.

Q. It was pretty smooth, wasn't it? [2498]

(Testimony of Emil Tell.)

A. Yes, sir.

Q. Do you mean to say that you saw the land before this vessel struck the reef?

A. Yes, sir.

Q. Did you or did you not testify under oath before the United States Steamboat Inspectors at Seattle, on May 24, 1935, at page 16 of the official transcript, as follows:

“Q. Nobody saw the land before this vessel struck, and yet it was clear?

A. No.”

Did you so testify under oath?

A. I did.

Q. What did you mean by that?

A. Meaning I couldn't see the rock.

Q. The question was “Nobody saw the land before this vessel struck”.

A. That is what I was referring to, the land we hit.

Q. But you didn't tell them that, did you, when you were asked the question?

A. I wasn't asked.

Q. It was hazy at the time of the stranding, wasn't it?

A. Along the shore lines.

Q. Were you or were you not asked the following question, and did or did you not give the following answer, on May 24, 1935, when examined as a witness by the United States Steamboat Inspectors:

(Testimony of Emil Tell.)

“Q. Did you notice the visibility then?

A. Yes. It was a little hazy.”

Did you so testify?

A. I did. [2499]

Q. You didn't say anything about the shore line there, did you, limiting it to the shore line?

A. Well, it was so far away from the land then.

Q. Your memory was better then, just a few days after the stranding, than it is now, more than two years later?

A. Oh, about the same.

Q. How do you account for the fact you didn't mention it was only a little hazy along the shore line and not just hazy generally, as you testified there?

A. You could see the haze along the shoreline more than you could other places.

Q. Why didn't you tell the Steamboat Inspectors the haze was only along the shoreline, and not generally?

A. I just answered the question. I wasn't asked that.

Q. They asked you if you noticed the visibility then, didn't they?

A. Yes.

Q. Do you know what caused this accident?

A. No.

Q. Have you any idea?

A. I know now.

Q. From what Mr. Long has told you?

A. No.

(Testimony of Emil Tell.)

Q. Now, did you or did you not testify before the United States Steamboat Inspectors at Seattle on May 24, 1935, at the investigation of this case, page 16 of the official transcript:

“Q. Now, Mr. Tell, the Board, referring to your years of experience as a sailor, would like to get from you an honest opinion as to what caused [2500] this accident.

A. I have no idea.”

Did you or did you not so testify?

A. I did.

Q. Did they not further ask you at that time, and did you not say under oath:

“Q. Do you really and sincerely mean that you are not saying that, because you hesitate?

A. No, sir.”

Did you or did you not so testify?

A. I did.

Mr. Long: I do not see where that is inconsistent.

The Court: The objection is overruled.

Mr. Long: May I have the privilege of reading the rest of it?

The Court: I will rule upon the request when it is made at the proper time.

Q. (By Mr. Ryan) Did the watch officers on the “Denali” attend faithfully to their duties when you were helmsman on the “Denali”?

A. Yes, sir.

(Testimony of Emil Tell.)

Q. Then you do not know what caused this accident?

A. No.

Q. Your story now is that they were not making entries in the log book properly, and you knew that at the time, didn't you?

A. I did.

Q. Why didn't you tell the Steamboat Inspectors about that?

A. They didn't ask me that.

Q. You didn't think those questions called for you to dis- [2501] close the full truth?

A. No, sir. I am not a licensed officer.

Q. Do you know a former seaman named Paul Rains?

A. I do.

Q. On or about September 7, 1935, in the afternoon, on board the Steamship "Dellwood", in Seattle, did you or did you not have a conversation with Paul Rains regarding the cause of the "Denali" stranding, in which you said, in substance, "The God-damned compass hadn't been tested for deviation for three years, and that is what put her on the beach." Did you or did you not so state?

A. I don't recall that at all.

Q. Do you deny that you stated that?

A. I don't remember talking to him.

Q. Do you deny that you stated that to Paul Rains on the afternoon of about September 7, 1935,

(Testimony of Emil Tell.)

on board the Steamship "Dellwood", on her arrival in Seattle from her voyage?

A. No; I don't remember making a statement like that to him.

Q. Do you deny that you made it?

A. I don't remember making it.

Q. But you do not deny it?

A. I don't remember making it.

Q. But you do not deny it?

A. If I don't remember it I can't deny or admit anything.

Q. How long have you lived at the Gatewood Hotel?

A. Oh, since May—since June, rather.

Q. Since June of what year?

A. This year.

Q. When was the last time you went to sea?

[2502]

A. In May.

Q. Of what year?

A. This year.

Q. How much more than regular seaman's wages are you being paid by the Alaska Steamship Company?

A. Just regular wages.

Q. How much are you receiving a month from the Alaska Steamship Company?

Mr. Bogle: If Your Honor please, I shall object to that as not proper cross examination.

The Court: The objection is overruled.

The Witness: Regular wages, and my room and meals.

(Testimony of Emil Tell.)

Q. How much money in cash do you receive every month from the Alaska Steamship Company?

A. Oh, I will have to figure that out.

The Court: If you can approximate it, Mr. Tell, will you kindly do so at this time.

The Witness: About \$120.

Q. (By Ryan) Is it not a fact that you receive \$180 for each and every month from the Alaska Steamship Company, right now?

A. Not \$180, no.

Q. How much?

A. I told you.

Q. \$120 a month, and for how long have you been receiving that from the Alaska Steamship Company, without any service on board a vessel?

A. Will you read that again? (Question read.) Since June.

Q. June of what year?

A. This year. [2503]

Q. You stated something about the ship taking a swing or something to the right from current; when did that occur?

A. Oh, about seven to ten minutes before we hit.

Q. And you even have it in quarters of a point, haven't you?—Did you make any record of that at the time?

A. I was looking at the compass.

(Testimony of Emil Tell.)

Q. Did you make any record of it, is the question?

A. No, sir.

The Court: Did you put that down in writing in any book of record?

The Witness: No, sir.

Q. Did you ever mention that three-fourths of a point at any time to anybody?

A. No. I just know she made a swing to the right.

Q. Did you at all times steer this "Denali" properly?

A. Yes, sir.

Q. You had no difficulty at all steering her?

A. No.

Q. Where did you stand lookout between midnight and 2:00 a. m.?

A. On the bridge.

Q. You didn't stand it on the fore-castle head?

A. No.

Q. Who read the patent log at 1:00 a. m., if anybody, on May 19th?

A. I did.

Q. You read it?

A. Yes, sir.

Q. Who read the patent log at 2:00 a. m., if anybody, on May 19th? [2504]

A. I did.

Q. Who read the patent log at 2:37 a. m. on May 19th, if anybody?

(Testimony of Emil Tell.)

A. I don't know.

Q. Do you know whether it was read at that time?

A. I couldn't say.

Q. Now, at 2:00 a. m., when you read the patent log, what course was the "Denali" on, on May 19th?

A. It was on North when I relieved the man at the wheel.

Q. What entry was made in the log book as to the course the "Denali" was on at that time?

A. There wasn't any made.

Q. The third mate has testified that he made an entry that the course at that was North $\frac{3}{4}$ West, that is the way he entered it in the log book, by the steering compass, and also by the standard compass. Did you know that that entry was made in the log book?

A. I don't know.

Q. If that entry was made it was false, isn't that right?

A. I didn't see anybody make any entry.

Q. That entry if made in the deck log book of the "Denali" at 2:00 a. m., May 19, 1935, log and course noted at 2:00 a. m., pilot house compass, North $\frac{3}{4}$ West, and bridge compass North $\frac{3}{4}$ West, is that correct or false, in fact?

A. I guess it is correct.

Q. Then how do you reconcile that with your testimony today, for the first time, that the ship was

(Testimony of Emil Tell.)

at that time steering a course other than North $\frac{3}{4}$ West?

A. Mr. Obert was piloting. [2505]

Q. Is that your only explanation?

A. Well, yes. I am not acquainted with navigation.

Q. Well, that entry in that log book is false, isn't that right?

A. I don't think so.

Q. You think the entry in the log book that at 2:00 a. m., May 19th, 1935, the "Denali" was steering a course by bridge compass North $\frac{3}{4}$ West, and by the pilot house compass North $\frac{3}{4}$ West, is correct, do you?

A. Yes.

Q. Then you withdraw the testimony you gave earlier today that at that time she was steering some other course, do you?

A. That is what I was steering.

Q. That is what you were steering?

A. I don't know what they put down in the log book. They might have put down in the log book. They might have put down South $\frac{1}{4}$ West, for all I know.

Q. On what heading or course was the "Denali" immediately before she struck the reef?

A. Well, $\frac{3}{4}$ of a point, that will be North by East half East.

Q. Is that the course you were steering on the "Denali" just before she struck the reef?

A. No.

(Testimony of Emil Tell.)

Q. What were you steering on the "Denali" just before she struck the reef?

A. North $\frac{3}{4}$ East.

Q. Who gave you that course?

A. The pilot told me to port my helm. [2506]

Q. And then he told you "Steady", is that right?

A. Yes.

Q. And when he told you "Steady" you were on what course?

A. North $\frac{3}{4}$ East.

Q. And that is the course you were steering at the time the vessel struck the reef, is that right?

A. Yes, sir.

Q. You know that if the ship was heading North $\frac{3}{4}$ East she wouldn't be in the middle of the channel, wouldn't even seem to be so?

A. It appeared to be in the middle of the channel.

Q. There was something wrong with the compass if the direction shown by the compass was North $\frac{3}{4}$ East and you could look and see that the ship would bump into Zayas Island if she kept on that heading?

Mr. Long: That is objected to as argumentative.

The Court: Let the witness answer the question, if he can, but similar questions should not be repeated.

The Witness: What was the question. (Question read.) Well, maybe she would run into Zayas Island.

(Testimony of Emil Tell.)

Q. You never told the Steamboat Inspectors anything about being able to see Zayas or Dundas Island, or any of those other thnigs, at 2:00 a. m. when you went on watch, on May 19th, did you?

A. No.

Q. Why didn't you?

A. I wasn't asked.

Q. They asked you how far you could see, and you said "That is pretty hard, Captain, to tell"; is that right? That was your answer? [2507]

A. Yes, sir.

Q. How far away was Zayas Island when you came on watch at 2:00 a. m. on May 19th?

A. I don't know.

Q. How far away was Dundas Island at that time?

A. I couldn't say.

Q. You could see Triple Island Light at that time, couldn't you?

A. I saw Triple Island Light when I took the second abeam bearing—or read the log, rather.

Q. At what time was that?

A. I have forgotten the time.

Q. You cannot tell us the time you took the second abeam bearing on Triple Island Light?

A. No.

Q. What was the last time that you saw Triple Island Light on that night?

A. At the last bearing, whatever time that was.

Q. And you do not know when that was?

A. No.

(Testimony of Emil Tell.)

Q. When was the last time you read the patent log, on the morning of May 19th, 1935?

A. A minute or so before 2:00 o'clock.

Q. Could you see Triple Island Light at that time?

A. I never noticed.

Q. You mean you didn't see the light; is that what you mean to say?

A. I wasn't looking for it.

Q. Did you see it or not?

The Court: That has been answered. Ask him another [2508] question.

Mr. Ryan: All right, Your Honor.

Q. (By Mr. Ryan) When you went back to read the patent log, just before 2:00 a. m., on May 19th, what did you see?

A. I never paid any attention to anything.

Q. To whom did you first convey information as to the courses of North and North $\frac{3}{4}$ East that you have mentioned today, for the first time?

A. I don't remember that.

Q. Well, try to remember it. To whom did you first tell that, that the actual courses you were steering were North and North $\frac{3}{4}$ East, when you were on watch on that vessel, just preceding her stranding?

A. I don't remember who I told it to, or if I did.

Q. Well, you must have told somebody. Can't you recall whom you told?

A. No.

(Testimony of Emil Tell.)

Q. When did you first tell anybody about these alleged courses of North and North $\frac{3}{4}$ East that you say you were steering immediately preceding the stranding of the "Denali"?

A. I was talking about it in the lifeboat to somebody, but I don't know who it was.

Q. Capt. Healy?

A. No.

Q. The second mate?

A. No.

Q. The third mate?

A. No.

Q. The chief officer? [2509]

A. No.

Q. Who?

A. I don't remember.

Q. That was in the lifeboat, leaving the "Denali", is that right?

A. Yes.

Q. When did you tell any of the officers of the Alaska Steamship Company about that fact, that you were actually steering courses of North and North $\frac{3}{4}$ East, immediately preceding the stranding of the "Denali"?

The Court: If you recall you may state it, and if you do not, then say so.

The Witness: No; I don't remember who I told about that.

The Court: The question is when, if you recall, was the first time.

(Testimony of Emil Tell.)

The Witness: I don't remember that.

Q. (By Mr. Ryan) When you came down to Seattle, immediately after the stranding, you came on the steamer "Alaska", didn't you?

A. Yes; I did.

Q. And then you went with Pilot Obert and others up to Mr. Murphy's office at Pier 2, did you not, in Seattle?

A. No, sir.

Q. Where did you go at that time, when you came off the "Alaska", on arriving here on the early morning of May 23, 1935?

A. I went up to see a doctor.

Q. Then who did you go to see, on that date?

A. I didn't see anybody. [2510]

Q. Who did you first see, connected with the Alaska Steamship Company, after you arrived in Seattle, after this stranding?

A. I don't recall that.

Q. Do you know Mr. Murphy?

A. Yes, I do.

Q. Did you go to Mr. Murphy's office on May 23, 1935, in Seattle?

A. I do not recall that at all.

Q. Do you deny that you did?

A. I do not. I do not recall it.

Q. Did you go to Mr. Bogle's office on May 23, 1935?

A. No, sir.

Q. In Seattle?

(Testimony of Emil Tell.)

A. No, sir.

Q. Are you sure you did not?

A. I am.

Q. When did you first go to Mr. Bogle's office and see Mr. Child or Mr. Long or Mr. Bogle?

A. On the 31st of May, this year.

Q. That was the first time you were ever in Mr. Bogle's office; do you mean to say that?

A. That is right.

Q. When did you first see them, or somebody connected with that office?

A. In San Francisco.

Q. When was that?

A. The 25th of May, this year.

Q. You are positive about that?

A. Yes. [2511]

Q. When you came back after this stranding to whom did you report the circumstances of this loss?

A. To the Inspectors.

Q. Before the Inspectors, the day before you went to the Inspectors, to whom did you report?

A. I don't remember.

Q. Who asked you to go to the Inspectors?

A. I think it was one of the officers.

Q. What officer?

A. I don't know which one it was.

Q. One of the officers of the Alaska Steamship Company?

(Testimony of Emil Tell.)

A. One of the officers on the ship, on the "Denali"?

Q. You don't know who it was?

A. No.

Q. Did you tell that officer that you had been actually steering the courses of North and North $\frac{3}{4}$ East before the stranding?

A. I did not.

Q. Did you tell anybody?

A. No.

Q. Why didn't you?

A. It was none of my business.

Mr. Ryan: That is all, Your Honor.

Mr. Pellegrini: I have a question or two that I would like to ask the witness.

The Court: You may do so.

Q. (By Mr. Pellegrini) Mr. Tell, I believe you testified that you fix the time of 2:25 by reason of the fact that the ship's bell was rung, is that right?

[2512]

A. Yes.

Q. And that is how you know that?

A. Yes.

Q. Now, did they ring the ship's bell on board the "Denali" all the time?

A. Every half hour.

Q. Did they ring it that night?

A. Yes, they did.

Q. I will ask you whether on page 15 of the transcript of the testimony in the trial of Capt.

(Testimony of Emil Tell.)

Obert before the Steamboat Inspectors, on June 21, 1935, you were asked this question:

“Q. There was a man on lookout?

A. Yes, sir.

Q. Did this man strike the ship’s bell half hourly?

A. No. We didn’t strike any bells.”

Were you asked that question, and did you make that answer?

A. I did; yes.

Mr. Pelegriani: That is all.

Redirect Examination

By Mr. Long:

Q. To whom does that refer, Mr. Tell, in that question the reference to “this man”? Does that refer to the lookout?

A. The clock in the wheel-house strikes itself, so we can not strike the bell in the wheel-house.

Mr. Long: Very well.

Mr. Ryan: If the Court please, I have a question in [2513] my notes that I forgot to ask, and I would like to ask the question of this witness. I want to show the witness this photograph here, this photograph of the “Denali”, and ask what that iron deck cargo was that was right next to the pilot house.

Mr. Long: I object to that, Your Honor, the witness didn’t take the pictures.

Mr. Ryan: He was asked about securing the deck cargo.

The Court: Yes. The objection is overruled.

(Testimony of Emil Tell.)

Further Cross Examination

By Mr. Ryan:

Q. What was this deck cargo that was in the forward well deck of the "Denali", right up against the pilot house?

The Court: As shown by what?

Mr. Ryan: As shown by this photograph, Claimants' Exhibit A-6-9, formerly Cargo Claimants' Exhibit 4-F, in connection with the deposition of Commander Richards.

Mr. Long: I wish to object to the form of the question. Counsel can ask what the photograph shows. But his statement that it was up against the pilot house is obviously untrue.

The Court: The objection is overruled.

Mr. Long: I ask that the statement be stricken.

The Court: The application is denied.

Mr. Long: Exception, please.

The Court: Exception allowed.

The Witness: Read that question, please. (Last question read.)

The Court: Look at the photograph. [2514]

The Witness: It could not be up against the pilot house. It was up against the bulkhead in the well deck.

The Court: No; but you can see——

The Witness: (Interposing) No, sir; I cannot see it; it is too close.

The Court: You mean on account of lack——

(Testimony of Emil Tell.)

The Witness: (Interposing) My eyes.

The Court: On account of lack of sufficient vision you cannot make out the small photograph, is that it?

Mr. Ryan: He says on account of his eyes, Your Honor.

The Court: Lack of vision, I said.

Mr. Ryan: What is the matter with your eyes?

The Witness: I cannot look at a little bit of a box or something that is on the deck there; I cannot tell that in the picture.

Mr. Long: Tell them what is the matter with your eyes.

Mr. Ryan: I will show this photograph to Your Honor.

Q. (By Mr. Ryan) You cannot tell what those objects are in the forward well deck of the "Denali"?

A. No.

Q. And you do not know what they are, in fact?

The Court: The Court has noted the picture.

Q. And you do not know what was in the forward well deck of the "Denali", do you?

A. There was deck freight of all description.

Q. What material?

A. Oh, we had machines, and all kinds of stuff.

Q. Iron and steel, and that sort of thing? [2515]

A. Well, machines has got a little iron in them.

Q. What is this object that is shown between the end of that cargo boom, leading down to the pilot

(Testimony of Emil Tell.)

house, on this photograph, Claimants' Exhibit A-6-9, formerly Cargo Claimants' Exhibit 4-F in connection with the deposition of Commander Richards?

The Court: If you can tell.

Q. (By Mr. Ryan—continuing) This black object that is to the left of the letter "A"?

The Court: If you can tell from your recollection of the cargo, or from that picture.

The Witness: No, sir; I do not know.

Q. You do not know from your recollection what it is, do you?

A. No, sir.

Q. Do you know what those tanks are for that are shown in that forward well deck?

A. It is cargo.

Q. What kind of tanks are they?

A. Iron tanks, I guess.

Q. How many of them are there in that forward well deck?

A. Two.

Q. Two on this side, and how many on the other side of the forward well deck, right next to that bulkhead?

A. Two there.

Q. This is the port side.

Mr. Long: I submit the photograph speaks for itself, Your Honor.

The Court: The objection is overruled. He may ask the witness. [2516]

(Testimony of Emil Tell.)

Q. (By Mr. Ryan) That bulkhead runs right up, the upper part of it constitutes the forward part of the pilot house, doesn't it?

A. Yes.

Q. What is the height from the forward well deck up to the deck of the pilot house?

Mr. Long: I object to that as improper cross examination. If he has asked that question once he has asked it fifty times.

The Court: The Court is inclined to think that there is a good deal of merit in that objection.

Mr. Ryan: I was trying to get that fact established beyond peradventure. That is all.

Redirect Examination

By Mr. Long:

Q. Mr. Tell, when did you come to Seattle for this case?

A. The 31st of May, last.

Q. Were you advised that the case was set for trial in June of this year?

A. Yes, sir.

Q. And then were you further advised that it was continued?

A. Yes, sir.

Q. Then what was it necessary for you to do in order to get a ship out of here, after the case had been continued?

A. I had to take out a card.

(Testimony of Emil Tell.)

Q. At the Union?

A. Yes, sir; and take my turn.

Q. Did anything happen to you this summer which prevented you going to sea? [2517]

A. Yes, sir.

Q. What happened?

A. I was sick.

Q. Are you being paid anything more in this case than your actual expenses and your wages on board the ship?

A. No, sir.

Q. Do you expect to be paid anything more?

A. No, sir.

Q. Do you know this man Paul Rains?

A. Yes; I do.

Q. This statement that you are supposed to have made, is that true?

A. I don't remember talking to him, even.

Q. Is it true, that anything was the matter with these compasses?

A. No.

Q. Did you testify before the Steamboat Inspectors in the investigation?

A. Yes, sir.

Q. I will ask you whether or not you testified as follows:

“Q. How long had you been at the wheel?

A. Oh, an hour or so.

Q. In your experience as helmsman you, of course, would know if there was anything wrong with the steering compass?

(Testimony of Emil Tell.)

A. I should think so.

Q. In your opinion was it behaving normally?

A. Yes, sir.

Q. You had no fault to find with the steering gear?

A. No, sir. [2518]

Q. The vessel answered her helm in a proper manner?

A. Yes, sir."

Did you so testify?

A. Yes, sir.

Q. And is that correct?

A. That is correct.

Q. Did you further testify, at the same time:

"Q. Had you ever noticed much difference in this voyage from Seattle between the standard and steering compass?

A. No, sir."

Mr. Pellegrini: I object to counsel attempting to impeach this witness.

Mr. Long: Counsel asked about the compasses.

The Court: The objection is overruled.

Mr. Pellegrini: An exception, please.

The Court: Exception allowed.

Q. (By Mr. Long) Counsel read you this question and answer:

"Q. Did you notice the visibility then?"

(Testimony of Emil Tell.)

Mr. Ryan: What page?

Mr. Long: It is either page 18 or 20—it is page 20 on my copy.

Q. (Continuing):

“Q. Did you notice the visibility then?

A. It was a little hazy.

Q. Could you see Zayas Island?

A. Oh, yes.”

Did you so testify?

A. Yes, sir.

Q. Did you further testify, the same page:
[2519]

“Q. After the accident happened did you see Dundas Island?

A. I saw land on both sides.”

Did you so testify?

A. Yes, sir.

Q. And is that correct?

A. Yes, sir.

Q. And did you also testify, page 21, before the Steamboat Inspectors, as follows:

“Q. You are satisfied that everything pertaining to the ship’s equipment is in good order?

A. Yes, sir.”

Mr. Summers: Just a minute, please——

Q. (By Mr. Long—continuing) Did you so testify?

Mr. Summers: Just a minute, please.

(Testimony of Emil Tell.)

The Witness: Yes, sir.

The Court: Wait a minute.

Mr. Summers: I object to that as not proper re-direct examination. There was nothing asked this witness on cross examination about that.

The Court: Do you recall anything asked by oral interrogatories, with reference to the transcript?

Mr. Summers: As I recall, there was no cross examination about the equipment generally.

The Court: I do not at this moment recall.

Mr. Long: I think so, Your Honor. Counsel went into it in detail, about compasses and other equipment. This is with reference to the compasses and the ship's equipment.

The Court: There was something about the direction [2520] he was steering, and whether or not he was on the compass, or on the pilot's orders, or whatever it was.

Mr. Summers: This covers everything.

The Court: I have some doubt about it, but he may answer the question.

Mr. Long: I have already propounded the question.

The Court: And the record shows that the question has been answered.

Q. (By Mr. Long) Did you answer it?

A. Yes, sir.

The Court: Read the question and the answer.

(Question and answer read as follows:

“Q. And did you also testify, page 21, before the Steamboat Inspectors, as follows:

(Testimony of Emil Tell.)

‘Q. You are satisfied that everything pertaining to the ship’s equipment is in good order?’

‘A. Yes, sir.’”)

Q. (By Mr. Long) Did you also testify before the Steamboat Inspectors, in substance and in effect as follows:

“Q. How does the officer on watch con the courses?

A. I tab what I want and he checks me.

Q. Have you a voice pipe overhead?

A. Yes, sir.

Q. How often do you do that?

A. Every hour or couple of hours.

Q. Have you ever noticed much difference in this voyage from Seattle between standard and steering compass?

A. No, sir.”

Did you so testify? [2521]

A. Yes.

Q. And is that correct?

A. Yes, sir.

Q. Did you further testify as follows, referring to the compasses again:

“Q. If there was any wide difference you would hear some comment about it, wouldn’t you?

A. Yes, sir.”

Did you so testify?

A. Yes, sir.

(Testimony of Emil Tell.)

Q. And further:

“Q. From the time you left Seattle there was nothing unusual about the compass?

A. No.”

Did you so testify?

A. Yes, sir.

Q. Do you know who this man Rains is employed by, that counsel spoke of?

A. Who he is employed by?

Q. Yes.

A. I don't know.

Q. Does he go to sea?

A. He used to.

Q. This man Rains, did you see him this summer, Emil, this fellow Rains?

A. No.

Q. Did you ever see him this summer?

A. No.

Q. Did you know he was looking for you?

A. Yes; I did. [2522]

Q. How did you find that out?

A. Through the Union Hall.

Q. Who told you down there?

A. The despatcher.

Q. What is his name?

A. Sam Thomas.

Q. What did you do when you heard that?

A. I came up and told you about it.

(Testimony of Emil Tell.)

Q. That is right; and what did he tell Thomas as to who he was representing?

A. The United States Steamboat Inspectors.

Q. And what did I do with you, immediately?

A. We went down to the Steamboat Inspectors.

Q. I took you to Capt. Hutchings?

A. Yes, sir.

Mr. Ryan: Just a minute——

Q. (Continuing) And didn't I say to him, "Are you looking for this man?"

The Court: The objection is sustained as to what you told him.

Q. (By Mr. Long) What was said by myself to Capt. Hutchings?

Mr. Ryan: I object to that.

The Court: The objection is sustained.

Mr. Ryan: In view of the order of the Court.

The Court: The objection is sustained.

Mr. Long: I want to show at this time that this man was posing as a United States Steamboat Inspector, and I heard about it, and I took this witness down to Capt. Hutchings immediately and asked Capt. Hutchings if he was looking for this witness, and Capt. Hutchings said [2523] no, and I asked if this man Rains was working for him, and he said he never heard of the man, and he said he would take it up with Washington and investigation would be made.

The Court: The objection is sustained at this time. It may or may not be material.

(Testimony of Emil Tell.)

Mr. Ryan: I move to strike Mr. Long's statement from the record.

The Court: The motion is denied.

Mr. Ryan: An exception, please.

The Court: An exception allowed.

Mr. Long: That is all. [2524]

Q. Can you see the standard compass from your station at the wheel in the pilot house?

A. No.

Mr. Long: I object to that as improper recross.

Q. (By Mr. Ryan) Then how do you know—

The Court: (Interposing) The objection is overruled.

Q. (By Mr. Ryan) Then how do you know whether there was—what the difference was between the standard and the steering compass?

A. I would not know.

Q. You would not know?

A. No.

Mr. Ryan: That is all.

Mr. Long: That is all.

The Court: You may be excused from the stand.

(Witness excused)

The Court: At this time the Court will take a ten minute recess.

(Recess)

(Testimony of David Patrick Scanlon.)

The Court: Call your next witness.

Mr. Long: Mr. Scanlon, will you take the stand?
[2525]

DAVID PATRICK SCANLON,

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Long:

Q. What is your full name, please?

A. David Patrick Scanlon.

Q. How do you spell your last name?

A. S-c-a-n-l-o-n.

Q. What is your business, Mr. Scanlon?

A. I am a seafaring man—a seaman.

Mr. Ryan: What is the answer?

(Answer read)

Q. (By Mr. Long) How many years have you been going to sea?

A. Oh, since 1918.

Q. Have you had any sea experience in Alaska?

A. Yes; about fifteen years.

Q. How old are you?

A. Forty-one.

Q. Were you a member of the crew of the "Denali" in the spring of 1935 on her voyage—

A. (Interposing) Yes, sir.

Q. (Continuing) —on which she stranded?

A. Yes, sir.

(Testimony of David Patrick Scanlon.)

Q. When and where did you join the vessel?

A. At West Seattle.

Q. Do you remember the date?

A. The 13th.

Q. Of what month? [2526]

A. May 13th.

Q. What is that?

The Court: "May 13", he said.

Q. (By Mr. Long) 1935?

A. 1935, yes, sir.

Q. Who sent you to the ship?

A. The Sailors' Union.

Q. What certificates, if any, do you hold issued by the United States Department of Commerce?

A. Able Seaman and Lifeboat certificate.

Mr. Ryan: What is that?

The Witness: Able Seaman and Lifeboat Certificate.

The Court: Mr. Scanlon, it is necessary that you hold your voice up and speak your words distinctly, because it is very difficult to hear in this room.

The Witness: Yes, sir.

Q. (By Mr. Long) Did you hold those certificates while you were a member of the crew of the "Denali"?

A. Yes, sir.

Q. In what capacity did you sign on that ship?

A. As Able Seaman.

Q. What watch did you stand at sea?

A. From four to eight.

(Testimony of David Patrick Scanlon.)

Q. That would be four to eight in the morning and four to eight at night?

A. Yes, sir.

Q. And what time did you come on watch on the morning of May 16th—the morning that the ship sailed from Pier 2?

A. At four o'clock. [2527]

Q. Did you stand a wheel watch that morning?

A. Yes, sir.

Q. Between what hours?

A. From six to eight.

Q. Where was the vessel between 6:00 and 8:00 A. M. on the morning of May 16th?

A. Between Pier 2 and West Point.

Q. Where was the ship when you came on watch?

A. It had just left Pier 2.

Q. I see. Where did the vessel go while you were at the wheel, or while you acted as helmsman?

A. Down the bay—down the Sound to West Point.

Q. And what happened at West Point? What did the vessel do?

A. It stopped.

Q. Just tell us in your own words what occurred there at West Point.

A. Well, a powder boat came alongside and started loading dynamite.

Q. What kind of a powder boat was it—what kind of a boat was it?

(Testimony of David Patrick Scanlon.)

A. A small, little wooden vessel, I should judge about fifty feet long.

Q. On which side was she, do you remember?

A. On the port side, up next to the rigging at No. 2.

Mr. Ryan: What was that answer?

(Answer read)

The Court: Mr. Scanlon—

The Witness: (Interposing) Yes, sir.

The Court: If you know the answers just speak up and give them so that all of us will hear them.

[2528]

The Witness: Yes, sir.

The Court: You have a right to be where you are now, just as much right as any person present has a right to be where he is, and you can make yourself at home there, but just keep your mind on the questions.

The Witness: Yes, sir.

The Court: And speak up so that we can all hear you.

The Witness: Yes, sir.

Q. (By Mr. Long) About what time, if you remember, Mr. Scanlon, did the vessel stop off West Point?

A. Oh, about 6:30—around about there—6:30 or 6:35.

Q. Now, what happened between that time and 8:00 o'clock while you were at the wheel?

(Testimony of David Patrick Scanlon.)

A. Well, we pulled up there, and stopped, and the boat came alongside there and stayed there, I should judge twenty or twenty-five minutes.

Q. All right. And then what happened?

A. The captain decided to swing ship.

Q. Go ahead.

A. And the second mate, he—the second mate came out of the chart room with the azimuth mirror and went up on top.

Q. Yes.

A. And the third officer stood by. He was told to stand by the telegraph.

Q. Who was with the second mate?

A. The captain.

Q. What did they do, and where did they go?

A. They went up on top—up to the standard compass. [2529]

Q. Did they take any instruments that you could see?

A. Yes, sir. They took an azimuth mirror with them.

Q. They took an azimuth mirror with them?

A. Yes, sir.

Q. About what time was that, as near as you can recollect?

A. Oh, about five minutes to seven, or seven o'clock.

Q. In the morning?

A. Yes, sir.

(Testimony of David Patrick Scanlon.)

Q. Now, just tell us what took place so far as you could observe after that.

A. Well, he told me to steady her up on the course that I was headed at that time.

Q. What course was that?

A. West Southwest, along about there, I guess.

Q. All right. What happened?

Mr. Ryan: I move to strike out the witness' answer. He says, "I guess".

Q. (By Mr. Long) Well, approximately what was it—the heading at that time?

The Court: The motion is granted, and counsel inquiring may establish the fact more definitely if he desires by further examination.

Mr. Long: That is all right.

Q. (By Mr. Long) Do you know the approximate heading at that time of the ship?

A. West Southwest.

Q. Just tell us in your own words, not too fast, what happened from then on.

A. Well, I steadied her on that course of West Southwest.

Q. How long did you stay steady on that course, approximately? [2530]

A. About three or four minutes.

Q. Then what happened?

A. Then the captain said, "Port one point".

The Court: Who said that?

The Witness: The captain. He said, "Port one point", and "Steady", and I steadied her on that,

(Testimony of David Patrick Scanlon.)

and I was there on that two or three or four minutes, along in there, and then I continued right around the compass.

The Court: Now, let us have that re-read.

Mr. Long: Just a minute. I have not quite finished.

Q. (By Mr. Long) Then the next one?

A. Then we continued right around the compass.

Q. Right around the compass which way?

A. Around towards the right.

Q. Towards the right?

A. Yes, sir.

The Court: Is that answer complete?

Mr. Long: Around to the right, as I understood it.

The Court: Is that answer complete?

The Witness: Yes.

The Court: Then I want to have it read.

Mr. Long: Just read that back, if you will, Mr. Reporter.

(Questions and answers read)

Q. (By Mr. Long) Now, approximately how far around to the right was the ship swung?

A. Oh, about east—I should say—a good half or a little better of the compass.

Q. You will have to speak up a little louder. I cannot [2531] quite hear you, Mr. Scanlon.

A. We swung to the right around to the east, or about east.

(Testimony of David Patrick Scanlon.)

Q. Did you stop at any time in your swinging?

Mr. Ryan: Would you read that answer?

(Answer read)

Q. (By Mr. Long) Now, during the time that you swung from West Southwest to about East, did you stop at any place all the way around?

A. We stopped on each and every point.

Q. And how long did you stay on each point?

A. From three to four minutes.

Q. Do you know what the second officer and the captain were doing?

A. Well, I surmise what they were doing.

Q. What was that?

Mr. Ryan: Wait a minute.

A. Swinging the ship to check the compasses.

Mr. Ryan: I object to any surmise of the witness.

Mr. Long: He is an experienced seaman.

Q. (By Mr. Long) Do you know what they were doing on the top side?

A. Yes.

Q. What were they doing?

A. They were taking azimuths.

Mr. Ryan: Wait a minute. The witness could not see what they were doing.

The Court: Objection overruled. In view of what took place—what you saw and in view of your experience on other occasions, do you know what was being done at that time? [2532]

The Witness: Yes, sir.

(Testimony of David Patrick Scanlon.)

Mr. Ryan: May I ask a question, Your Honor? The witness has already used the words, "I surmised what they were doing". Now, he was in a position where it is already shown by the record that he could not see them at all. How can a man be asked to tell what some people were doing when they were doing something not within the range of his vision?

The Court: It might be that if you or I used the word "surmise" on the witness stand it might be a case that we would mean to indicate what the word means, but in view of this witness' manner of testifying, and the Court having observed that, and his sea language, the objection is overruled.

Q. (By Mr. Long) What were they doing, Mr. Scanlon?

A. They were taking azimuths.

Mr. Ryan: May I ask a question? Did you see them doing that?

The Court: No, you need not answer, witness. You may ask your questions on cross examination.

Mr. Ryan: Very well, Your Honor.

Q. (By Mr. Long) About how long a time were the second officer and the captain engaged, or at work on the top bridge where the standard compass is while you were swinging the ship as you have testified here?

A. Oh, about an hour.

Q. When were you relieved at the wheel, sir?

A. At eight o'clock.

(Testimony of David Patrick Scanlon.)

Q. Had they completed their work up there at that time?

A. They just came down as I got relieved, yes, sir. [2533]

Q. They just came down as you got relieved?

A. Yes, sir.

Q. Now, were you on the wheel watch of the Steamer "Denali" from any time thereafter until the ship stranded?

A. Yes. The following morning.

Q. I beg your pardon?

A. The following morning.

Q. I see. By the way, what duties did you have to perform in connection with the ship's gear in the morning, Mr. Scanlon?

A. Well, from 4:00 to 8:00 o'clock it is a kind of order, in fact, on all Alaska steamships or freighters to take care of the steering gear in the wheel house in the morning and do the sanitary work.

Q. I see.

A. To take care of the steering wheel.

Q. And what care do you give the steering wheel?

A. We grease it. We grease all parts; the quadrant and the chains.

Q. How frequently was that done on this voyage?

A. Twice every day; night and morning.

Q. Did you personally do that?

A. Yes, sir.

(Testimony of David Patrick Scanlon.)

Q. Now, on this voyage, Mr. Scanlon, and while you were at the wheel, just tell us how the vessel steered as you observed it?

A. It steered good.

Q. Did you observe any defects in the compass?

A. No.

Q. Did you observe any trouble with the compass at any time? [2534]

A. No.

Q. How about the card—how did the compass card appear as you looked at it?

A. It appeared all right to me.

Q. Tell us, Mr. Scanlon, while you were at the wheel watch on this voyage did you observe the officers taking any azimuths on the voyage?

A. I did. The following morning; yes, sir.

Q. And did you have some duty to perform in connection with their taking of azimuths or bearings?

A. Steady the ship on her course.

Q. You did what?

A. I had to keep the ship steady on her course while they were taking them.

The Court: That is right. Keep your voice raised while you are testifying.

Q. Where were you when the ship struck?

A. I was in bed.

The Court: I did not hear that answer.

(Answer read)

The Court: I wish you would keep your voice up.

(Testimony of David Patrick Scanlon.)

You would not convey a message on board a ship in that tone of voice. I know that you would not. Keep your voice up, and clear and distinct so that we will all hear what you say. It is necessary that we all hear it.

The Witness: All right.

Q. (By Mr. Long) Just one other question. While you were on watch, Mr. Scanlon, did you observe the watch officers comparing and checking the steering and standard compasses? [2535]

A. Yes, sir.

Q. Did you have some duty to do in connection with that work?

A. Yes, sir, I did.

Q. What did you do?

A. I steadied the ship on the course while they were checking the compasses.

The Court: Every word is just as important as any other word in the sentence, because we have got to hear every word. Keep your voice raised now.

The Witness: Yes, sir.

The Court: I know that you can do it.

Q. (By Mr. Long) After the stranding, Mr. Scanlon, did you go ashore?

A. Yes, sir.

Q. How did you get ashore?

A. By lifeboat.

Q. Did you row the boat?

A. Yes, sir.

(Testimony of David Patrick Scanlon.)

Q. Do you know where you went ashore—on what land it was?

A. Yes, sir.

Q. What land was it?

A. Zayas Island.

Q. What did you observe with reference to any current while you were rowing the boat there? Just tell us in your own words, and speak up now so that we can hear it.

A. Well, when we dropped the boat into the water—

Q. (Interposing) On which side of the ship?

A. The starboard side.

Q. All right. [2536]

A. She drifted right aft where we held her away from the side of the ship. She was crowding the ship.

Q. All right; go ahead.

A. And we got astern of the ship, and there was a little house over on the beach, and we tried to make for this little house, and we drifted about half a mile below the house—possibly three-quarters of a mile below—as the tide carried us down.

Q. Now, which direction, approximately, did the tide carry you?

A. It carried us to 'the south end of Zayas Island.

Q. Which direction would that be, if you know, with relation to east, west or south?

A. It would be west.

Mr. Long: That is all.

(Testimony of David Patrick Scanlon.)

Cross Examination

By Mr. Ryan:

Q. Tell us what you know about compass deviations.

A. I don't know anything about them.

Mr. Long: That is objected to as improper cross examination. I haven't asked the witness any questions about compass deviations.

The Court: Objection overruled. He said that he didn't know anything about them. That was his answer.

Mr. Ryan: All right, Your Honor.

Q. (By Mr. Ryan) Then you don't consider yourself capable of determining when a compass is in a satisfactory condition, do you? [2537]

A. Well, to a certain extent I do, yes.

Q. Well, when you are standing down there in the pilot house, steering, you have no idea whatever what is on the standard compass, have you?

A. Only from what I have been told, or what is brought down by the officers.

Q. The officers report to you?

(Witness does not answer)

Q. They don't report to you, do they?

A. Oh, no; no.

Q. Did you see a second powder boat on the morning of May 16th when the "Denali" sailed from Seattle?

A. Yes, sir.

Q. Off West Point?

(Testimony of David Patrick Scanlon.)

A. Yes, sir.

Q. And what time did she come along the "Denali" and was made secure?

A. I can't tell you just what time she came alongside.

The Court: What is that?

Mr. Long: Speak up, Mr. Scanlon. We cannot hear you.

A. I can't tell you just what time she came alongside.

Q. (By Mr. Ryan) How soon was it after the "Denali" arrived off West Point that the second powder boat got her lines over and was secured alongside the "Denali"?

A. That I cannot answer, as to the time.

Q. Where were you at the time?

A. At the wheel.

Q. At the wheel?

A. Yes, sir. [2538]

Q. When the second powder boat was coming alongside did the "Denali" make any manouvers so that she could come alongside safely or not?

A. Yes, I believe that she did.

Q. Well, what manouvers did she make?

A. Well, she was stopping, and went slow around and stopped.

Q. And what time was that?

A. I don't know just what time it was.

Q. On which side of the ship did the second powder boat secure alongside of the "Denali"?

(Testimony of David Patrick Scanlon.)

A. On the starboard side.

Q. On the starboard side?

A. Or on the port side.

Q. Now, which side was it?

A. On the port side.

Q. On the port side?

A. Yes, sir.

Q. That was the same side that the first powder boat was secured alongside, was it?

A. Yes, sir.

Q. Was it?

A. Yes, sir.

Q. They both were secured on the same side?

A. Yes, sir.

Q. West Point is on the starboard side of the "Denali" as she goes up on Puget Sound, on reaching West Point, isn't it?

A. Yes, sir.

Q. Yet both powder boats came over from the port side, is [2539] that right?

A. I don't know, from the position that the ship was in, just where they came from.

Q. How long was it after you went on watch that the second powder boat came alongside?

A. I don't recall that.

Q. Well, was it half way through, or immediately after you came on watch, or when was it?

A. I cannot recall the time.

Q. Well, both powder boats came together, didn't they? they were both lying off West Point waiting for you, weren't they?

(Testimony of David Patrick Scanlon.)

A. Well, they were supposed to come, yes.

Q. Well, you saw them?

A. At a distance, yes.

Q. Both of them were coming out to the ship?

A. Yes, sir.

Q. They were racing there to see who would get out there first, weren't they?

A. Well, I don't know that they were.

Q. Well, it looked that way, didn't it?

A. They were coming, but I don't know as they were racing.

Q. One of them got there first and secured up alongside of No. 2 hatch, isn't that right?

A. Well, from where I was standing I could not see the boats alongside of the ship when they came.

Q. You could not?

A. No, because they got in close.

Q. Well, they would have to get in mighty close before they would go out of your line of vision, wouldn't they, [2540] standing there at the wheel?

A. No, not necessarily.

Q. You mean to say that a man standing at the wheel cannot see a boat that is coming alongside right up until she is practically alongside of the ship?

A. No, sir.

Q. Now, what course was the "Denali" steering from Pier 2 up to West Point?

A. That I don't remember.

Q. What?

(Testimony of David Patrick Scanlon.)

A. I don't remember.

Q. What course was the "Denali" steering at 8:00 A. M. on May 16, 1935?

A. We were just swinging back to an earlier course when I was relieved at the wheel.

Q. Do you understand the question?

A. Yes, sir.

Q. Then answer it.

A. We had no set course at that moment.

Q. At 8:00 A. M. on May 16, 1935, the "Denali" was not on a set course?

A. No, sir.

Q. That is when you went off watch, isn't it?

A. When I went off watch she wasn't on a set course.

Q. And that was at 8:00 o'clock?

A. I don't know whether it was five minutes to eight or eight o'clock, or just what it was, but it was around eight o'clock.

Q. On what course was the "Denali" at 6:22 A. M., May 16, 1935? [2541]

A. I cannot tell you.

Q. On what course was the "Denali" at 5:57 A. M. on May 16, 1935?

A. I don't know that.

Q. What?

A. I don't know that.

Q. You were at the wheel, weren't you?

A. At what time?

Q. At 5:57 A. M.

(Testimony of David Patrick Scanlon.)

A. No, sir.

Q. On May 16, 1935.

A. No, sir. I came onto the wheel at 6:00 o'clock.

Q. Well, at 6:22 A. M. on May 16, 1935, what course was the "Denali" steering?

A. I don't remember.

Q. Now, when they were swinging this ship, all you got was the order to steady, isn't that right?

A. Port and steady.

Q. Yes.

Mr. Long: I didn't hear the answer.

A. Port and steady.

Q. (By Mr. Ryan) Did you make any record at the time of the headings that the ship was on?

A. No, sir. I made no record.

The Court: Is that your answer, "No, sir, I didn't know that"?

The Witness: I said, "I didn't make no record".

Q. (By Mr. Ryan) How many times did the "Denali" stop her engines between 7:00 and 8:00 A. M. on May 16, 1935?

A. I don't know. [2542]

Q. What?

A. I don't remember.

Q. Well, you were on watch at the wheel, weren't you?

A. Yes, sir, I was on watch at the wheel.

Q. But you cannot give us any idea how many times she stopped her engines?

A. No, sir, I cannot.

(Testimony of David Patrick Scanlon.)

Q. Well, now, when you swung around, was there or was there not a stop order given to the engines and executed on the engine room telegraph?

A. Yes, I believe there was.

Q. How many times, roughly, if you remember?

A. I cannot remember. I made no estimate.

Q. At what time do you say that the "Denali" started swinging through those headings?

A. As close as I can remember five minutes to seven or at seven o'clock, or maybe at ten minutes to seven. In about that neighborhood.

Q. At that time were both powder boats secure alongside or not?

A. That I cannot say.

Q. What was the first order that you heard to the engines?

A. I don't remember that.

Q. After this supposed swinging?

A. After this what?

Q. After this alleged swinging began what is the first order that you heard to the engines?

A. I don't remember.

Q. Well, how were the engines proceeding at the time that this swinging began, if you know? [2543]

A. Slow ahead.

Q. How long did they continue slow ahead after the swinging began?

A. I didn't pay any attention to the telegraph.

Q. Can't you give us any idea?

A. No.

(Testimony of David Patrick Scanlon.)

Q. Approximately how many times the engines were stopped, can't you give us any idea?

A. No, sir.

Q. Or changes of speed that were made?

A. No, sir, I cannot. I paid no attention to the telegraph.

Q. Now, when this order was given to you to port your helm, is that the order that you got?

A. Yes, sir.

Q. And then you would continue on that until what time? Would they rap, or something, or what would they do? How did you know when you got to a point where you were to steady?

A. The orders were port a point and steady.

Q. They were not checking by the standard compass at all, is that right?

A. Yes.

Q. You were the one that was setting the course, were you?

A. No.

Q. Then what do you mean?

A. They were checking me. I put it plain on the steering compass according to what they wanted up there. They were telling me what to do.

Q. Then how would you know when you got to the point where you were to steady? Nothing would happen there, isn't [2544] that right?

A. Yes. They would sing out, "Steady".

Q. Would they order you to steady?

A. Yes, sir.

(Testimony of David Patrick Scanlon.)

Q. Then the order came to you, "Port your helm" like that?

A. "Port a point", and when I got in close they would say, "Steady".

Q. They would not leave it to you when you got to the point to steady her?

A. No. They would sing out, steady.

Q. What they would do would be that they would give you the order to port your helm one point?

A. Yes, sir.

Q. And when you did that you got an order to steady her, and then you would steady her, is that right?

A. Yes. What other order would they have to give?

Q. Well, they gave you the order to port the helm, didn't they?

A. Yes, sir.

Q. And then you would port the helm, is that right?

A. Yes, sir.

Q. And then after you swung around a certain time they would say, "Steady"?

A. Yes, sir. They would say, "Port the helm one point; steady".

Q. Is that all that happened?

A. Yes, sir.

Q. And you made no record of where you steadied her?

(Testimony of David Patrick Scanlon.)

A. I made no record, no.

Q. Now, do you mean to tell us that you know now exactly [2545] where you steadied on any of those points?

A. Well, I steadied on each and every one of them.

Q. Do you know on which points you steadied?

A. Yes, sir.

Q. All right. Did you steady on East by North?

A. Yes, sir.

Q. Well, you are the only witness in the case who has testified that the ship was ever on that heading. Do you still think that you were on that heading?

A. (Witness does not answer)

Q. Do you still think that you were on that heading?

A. I went around as far as east to my knowledge.

Q. I see.

A. I went around as far as east to my knowledge.

Q. Have you anything to support your statement to that effect?

Mr. Long: That is not cross examination. That is simply arguing with the witness.

The Court: Objection overruled.

A. No. I am merely giving you the best of my remembrance as to what we did. I have got nothing to show for it. I made no records of any of that stuff.

(Testimony of David Patrick Scanlon.)

The Court: Ask him another question.

Q. Do you know Paul Rains?

A. Yes, I know Paul Rains.

Q. Do you know Ernest Falk?

A. Not offhand, I don't believe I do.

Q. Will you stand up, Mr. Falk?

(Mr. Falk stands up in the court room)

Q. Do you know Mr. Ernest Falk (indicating Mr. Falk)? [2546]

A. No, I don't know that I do.

Q. Did you see Ernest Falk and Paul Rains on or about September 5, 1935?

Mr. Long: Let the record show that Mr. Falk is employed by Mr. Summers and Mr. Ryan.

The Witness: September 5th?

Q. (By Mr. Ryan) Yes.

The Court: Let the witness testify. The record will have to stand as made by the witness.

Mr. Ryan: I move to strike Mr. Long's statement.

The Court: Yes, that motion is granted.

Mr. Long: You do not deny that, do you, Mr. Ryan?

The Court: It is granted. Proceed. That statement by Mr. Long is stricken.

Q. (By Mr. Ryan) Did you or did you not state to Ernest Falk and to Paul Rains, on or about September 5, 1935, in Seattle, at the Boulders Tavern—

Mr. Long: (Interposing) At where?

(Testimony of David Patrick Scanlon.)

Mr. Ryan: At the Boulders Tavern.

Mr. Long: I didn't hear the name.

Q. (By Mr. Ryan, continuing)—with respect to the cause—

The Court: (Interposing) Boulders, B-o-u-l-d-e-r-s Tavern, Mr. Long.

Q. (By Mr. Ryan) Did or did you not state to Ernest Falk and to Paul Rains on or about September 5, 1935, in Seattle, Washington, at the Boulders Tavern, with respect to the cause of the "Denali" stranding, in the course of that conversation in substance, "It is my opinion that the ship was put off her course by the large amount of metal cargo on the fore deck, causing deviation of the [2547] compasses". Did you or did you not so state?

A. I did not so state.

Q. What did you state at that time to those persons?

A. I don't believe that I ever was in the Boulders Tavern on that date.

Q. Well, what have you stated at any time, and at any place, to those two persons with respect to your opinion as to the cause of the "Denali" stranding?

Mr. Long: That is objected to.

A. I never said nothing, to my knowledge. I never talked to them gentlemen over there at all.

Q. All right. Have you ever stated to Paul

(Testimony of David Patrick Scanlon.)

Rains—given him your opinion with respect to the cause of the “Denali” stranding?

A. No, sir, not to my knowledge.

Q. Well, that is not quite an answer. Read the question.

Mr. Long: That is improper cross examination. He has asked him an impeaching question and the witness has answered it and he said, “No”.

The Court: You ought to ask him what specific statement he made.

Mr. Long: Certainly. Now, is this statement signed, Mr. Ryan? If it is, may I see it?

Mr. Ryan: Now, I object——

The Court: (Interposing) Counsel is entitled to ask him whether he said so and so in the presence of a man, whether it is in writing or oral.

Mr. Long: Well, I am asking whether it is in writing or not. I would like to see it if it is. I think that counsel should advise me. [2548]

The Court: Wait until he propounds the question.

Q. (By Mr. Ryan) Have you ever stated to Paul Rains and Ernest Falk, or to either of them, in substance, as follows: “It is my opinion that the “Denali” was put off her course by the large amount of metal cargo on the fore deck, causing deviation of the compasses”.

Mr. Long: I object to that.

A. No, sir.

Q. You deny that?

A. I deny it absolutely.

Mr. Long: I object to that.

The Court: He has answered the question.

Mr. Ryan: That is all.

Redirect Examination

By Mr. Long:

Q. Where is this Boulders Tavern? What is it, do you know? Have you ever seen the place?

A. Yes, I have seen it.

Q. What is it?

A. It is a beer parlor and dance hall, if that is what you want to call it.

Q. Did you ever talk to Paul Rains there about this case?

A. No, not to my knowledge.

Q. Or at any other place?

A. No, sir.

Q. Now, there is just a little confusion with respect to the orders that you received from the master while swinging the ship. Will you tell us in your own language—first, [2549] let me ask you, what does the order, “Port your helm” mean? Which way does that swing your ship’s head?

A. Starboard.

Q. That is right. Now, just tell us in your own words, slowly, now, what actual orders you received, as near as you can remember, in your own words.

Mr. Ryan: I object to that as not proper redirect examination. The matter was fully covered on direct.

The Court: The objection to the question is sustained on the ground that it is repetitious.

Mr. Long: Well, if Your Honor is clear as to exactly what happened, all right.

(Testimony of Erland L. Erlands.)

The Court: Yes, I am clear on what this witness said happened. I heard this witness which, according to this man, was very fully given on direct examination.

Mr. Long: Very well, that is all.

The Court: You may be excused from the stand.

(Witness excused)

The Court: Call your next witness. [2550]

ERLAND L. ERLANDS

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name?

A. Erland L. Erlands.

Q. What is your business or profession?

A. Stevedore foreman.

Q. Have you had any seafaring experience?

A. Oh, yes, quite a bit.

Q. How many years?

A. Oh, I started when I was 14.

Q. What licenses do you hold?

A. Master, unlimited.

Q. Did you have any experience in Alaska waters?

(Testimony of Erland L. Erlands.)

A. Quite a bit.

Q. How many years, Captain?

A. Well, I would say from 1911 to the fall of 1917.

Q. In what capacity?

A. Sailor, quartermaster, and as a mate.

Q. How long have you held a master's license?

A. Since 1921.

Q. How long has it been, Captain, since you have been going to sea actively?

A. I have never been a captain.

Q. What?

A. I have never sailed as a captain.

Q. I say, how long has it been since you have been going to sea? [2551]

A. 1921.

Q. What have you been doing since that time?

A. Stevedore foreman for the Alaska Steamship Company.

Q. As stevedore foreman just what are your duties?

A. To load and unload the ships.

Q. At what port?

A. Seattle.

Q. Were you acting in that capacity in May, 1935?

A. Yes, sir.

Q. Did you have anything to do with the loading of the cargo on the steamship "Denali"?

A. Yes, sir.

(Testimony of Erland L. Erlands.)

Q. Just what did you have to do with that?

A. Well, it was my duty to put the cargo in the ship, to load it, so that it would come in rotation when it gets up to Alaska.

Q. You mean rotation as to ports?

A. Yes, sir; according to the ports.

Q. And did you do that?

A. Yes, sir.

Q. Do you draw up a cargo plan showing the loading of the cargo?

A. Yes, sir.

Mr. Bogle: I will ask to have this cargo plan identified.

(Cargo plan marked for identification Petitioner's Exhibit No. 61.)

Q. I will show you a paper here that is marked Petitioner's Exhibit No. 61 for Identification. Can you tell us what that is? [2552]

A. Yes; that is a copy of the original plan I drew of the ship.

Q. I notice that down in the right hand corner it says "S. S. Oduna".

A. Well, there are five freighters of the same type and same build, and they make one plan for all of them.

Q. Is this one of the original plans?

A. This is one of the original plans, yes.

Q. Does this show approximately the place, the location of the cargo as stowed in the ship?

A. Yes, sir.

(Testimony of Erland L. Erlands.)

Q. Did you have any deck cargo on that voyage?

A. Yes, sir.

Q. Where does the location of the deck cargo show on this plan?

A. Right in here (indicating), on the well deck.

Q. Can you tell us from this plan what cargo you had loaded on the well deck?

A. On the port side we had one——

Mr. Ryan: (Interposing) Just a minute; I think the plan ought to be offered in evidence.

Mr. Bogle: I am going to offer it, Mr. Ryan, but I thought I had to identify it a little further, first.

Mr. Ryan: I think it should be identified by the witness, first.

The Court: Counsel may ask the question.

The Witness: On the port side we had a 12 ton boiler for Blue Fox Bay, and on the same side we had three or four—I don't remember correctly how many it was, but it was three or four road graders for the Government, [2553] at Anchorage.

Q. Road graders?

A. Yes; road graders. And then we had on the port side, in the rigging, we had one 8 ton boiler for Blue Fox Bay. And on the port side forward—well, I should say we had around ten to fifteen thousand feet of lumber for Skowl Arm.

The Court: Let the answer be more direct in response to the question. I do not understand that the question calls for the witness to delineate and

(Testimony of Erland L. Erlands.)

specify the various items of cargo loaded on the ship.

Mr. Bogle: I do not intend that by the question, Your Honor, but I will offer this cargo plan in evidence.

The Court: There being no objection——

Mr. Pellegrini: If the Court please, I object to this offer unless it is identified as the actual cargo plan of the vessel, the cargo loaded on the "Denali" at the time she sailed.

The Court: You might proceed, if you wish to ask anything further.

Mr. Ryan: If it is going to be offered may I examine the witness?

Mr. Pellegrini: I think the witness stated that the plan is used for all of the ships of that same class. That is my recollection of his testimony.

Mr. Bogle: The blueprint part of it is the same for all of them. I thought I had asked him the question.

Mr. Ryan: Just a minute; if you offer this in evidence I would like to examine on it.

Mr. Bogle: I have offered it, and there has been an [2554] objection.

The Court: Counsel may proceed with further questions touching the proper authentication of this exhibit No. 61 for identification.

Q. (By Mr. Bogle) Is this Petitioner's Exhibit No. 61 for Identification one of the original cargo plans which you prepared, showing the ap-

(Testimony of Erland L. Erlands.)

proximate place of stowage of cargo on the steamship "Denali" on Voyage No. 38, upon which she was lost?

A. Yes, sir, that is the actual blueprint. That is a copy of the original. I used two in making out the cargo plan; one I give to the chief officer, and the other one I turn in to the company.

Q. The one we have here is the one that you turned in to the company?

A. Yes, sir.

Q. Then this shows approximately the location of all cargo loaded on the "Denali", Voyage No. 38, on which she was lost?

A. Yes, sir.

Mr. Bogle: Now I offer it in evidence.

The Court: The offer is now renewed. Do you wish to inspect it, Mr. Ryan?

Mr. Ryan: Yes; I do. May I ask one or two preliminary questions of this witness about this plan?

The Court: If the questions relate to the identity of it, or the identification of it, or the authenticity of it, you may do so.

Q. (By Mr. Ryan) Does this plan show the deck cargo that was loaded in the forward well deck of the "Denali"? [2555]

A. Yes, sir.

Q. Where?

Mr. Bogle: If Your Honor please, that is part of my direct examination.

(Testimony of Erland L. Erlands.)

The Witness: Right here (indicating); this is all the stuff that was put in there. That is No. 1 hatch, No. 2 and No. 3.

Q. (By Mr. Ryan) Is this in your handwriting?

A. That is my handwriting.

Q. These changes are in your handwriting, too?

A. No. That is something I don't know about. I use carbon paper.

Mr. Ryan: If Your Honor please, we directed an interrogatory to the Petitioner in connection with this cargo, and the Petitioner instead of producing any such plan as this gave a specific answer to the interrogatory in detail. Now, if this document that is now produced for the first time is intended to vary or depart from the answers to the interrogatories already made by the Petitioner I wish to object to it on the ground that the Petitioner is estopped from making any change at this time. If it does nothing but give the same information that was given in the answers to interrogatories, then it is entirely immaterial, and so I object to it.

The Court: The objection is overruled.

Mr. Bogle: The answers to the interrogatories are not proof, of course.

Mr. Summers: An exception, if the Court please.

The Court: Exception allowed. Petitioner's Exhibit No. 61 is now admitted. [2556]

(Cargo plan of "Denali" received in evidence Petitioner's Exhibit No. 61.)

(Testimony of Erland L. Erlands.)

Q. (By Mr. Bogle) Now, Captain, where on this Petitioner's Exhibit No. 61 does it show the stowage of your well deck cargo, on the second blueprint?

A. On the second blueprint from the top.

Q. Take this pencil now, and on the port side what cargo did you have, on the well deck?

A. On the port side?

Q. On the port side.

Mr. Ryan: Let it be understood that I have a continuing objection to this line of examination.

The Court: Yes.

Mr. Ryan: On the ground that the Petitioner has already answered the interrogatories, and if this is a departure from the interrogatories I protest against the Petitioner making a departure at this time, and if it is not a departure, then it is entirely immaterial.

Mr. Bogle: I submit that the answers to our interrogatories are not admitted by them, and we have got to prove any material fact that is answered by an interrogatory. That may be binding upon us, but we cannot rely upon it as proof.

The Witness: I have checked it over——

The Court: Indicate it to counsel, so that counsel can see it.

Mr. Bogle: I want to get it a little more definite.

Q. (By Mr. Bogle) Taking on the port side, your first check is what?

A. A 12 ton boiler for Blue Fox Bay. [2557]

(Testimony of Erland L. Erlands.)

Q. Mark that "A", will you?

A. All right.

Q. And the next?

A. The next is graders, for Seward, road graders.

Q. Will you mark that "B".

A. And the next one is an 8 ton boiler for Blue Fox Bay.

Q. Will you mark that "C".

A. Yes, I have that.

Q. And the next?

A. And then the fourth item is lumber for Skowl Arm.

Q. Now, go over to the port side. You need not mark the lumber.

A. That was on the port side.

Q. Now, take the starboard side.

A. Starting from aft, one dump truck.

Q. Mark that "D".

A. Yes (Witness indicates on plan).

Q. And your next?

A. The next is another dump truck.

Q. Will you mark that "E".

A. (Witness indicates on plan.) Then the next is a 20 ton rock crusher.

Q. Mark that "F".

A. (Witness indicates on plan.) Then the next one is one road grader.

Q. Will you mark that "G".

(Testimony of Erland L. Erlands.)

A. (Witness indicates on plan.) Then the next we have is an engine, a gasoline engine from Crab Bay.

Q. Mark that with "H".

A. (Witness indicates on plan.) [2558]

Q. Now, what did you have amidships?

A. Starting from aft, on No. 3 hatch we had one dump truck.

Q. Mark that with "I".

A. (Witness indicates on plan). Then on No. 2 hatch we had one tank, for Fairbanks.

Q. Mark that with "J".

A. (Witness indicates on plan). On the same hatch we had one dump truck.

Q. Mark that with "K".

A. (Witness indicates on plan). Going to No. 1 hatch, one tank for Fairbanks.

Q. Mark that with "L".

A. (Witness indicates on plan). Then we had two dump trucks on the port side on the hatch.

Q. Mark them with "M".

A. (Witness indicates on plan).

Q. How far is the well deck from your standard compass, vertically?

A. Oh, I should judge between 28 and 30 feet.

Q. This first cargo, marked "A", "J" and "D", was that the first cargo immediately forward of the bulkhead?

A. Yes, that was the first. There should be about six feet between that and the bulkhead.

(Testimony of Erland L. Erlands.)

Q. That is where it starts to load?

A. Yes. Of course we cannot put it any closer on account of the Sampson post sticks out about four feet from the bulkhead, and then your blocks of material are attached to the foot of that, so we have to allow that much space.

Q. Captain, about how far were those three objects that you [2559] have mentioned and marked as "A", "J" and "D" from your standard compass?

A. Oh, I would say around 40 or 45 feet.

Q. As you go forward, Captain, the other cargo that you have mentioned there, would that be a greater or less distance from your standard compass?

A. It would be a greater distance from the compass.

Q. How far is your forward mast from your standard compass?

A. Well, I should judge 75 or 80 feet.

Q. Of what material is that mast constructed?

A. Steel.

Q. That is a permanent part of the ship?

A. Yes, sir.

Q. How many cargo booms did you have on that mast?

A. She has got five booms.

Q. Of what material are they constructed?

A. One of steel, and four of wood.

(Testimony of Erland L. Erlands.)

Q. Have the wooden booms any steel or iron fitting of any kind?

A. Yes, sir. You have the gin blocks, and you have the iron bands, and of course you have the winch falls running through the blocks.

Q. When your cargo booms are topped how far would you say they are located from your standard compass?

Mr. Ryan: If the Court please, may I object to that?

The Court: Yes.

Mr. Ryan: On this ground; that this is the owner of the steamship that is taking this testimony, and the owner undoubtedly has the plans of the ship that would show all these locations exactly. [2560]

We have done our best to get the plans of the ship, at great inconvenience and expense, and we have produced what were delivered to us as the plans of this ship. They are marked for identification as a Claimants' exhibit, and I respectfully suggest that this is just unnecessarily encumbering the record with speculative estimates by this man regarding something that is capable of precise proof, which will require extended cross examination to show that he is incorrect in certain respects, when the matter must be definitely within the knowledge of the Petitioner, and within the knowledge of counsel for the Petitioner, from the builder's plans of the ship, which we have demanded should be pro-

(Testimony of Erland L. Erlands.)

duced, and which I again demand should be produced.

The Court: The objection is overruled. Proceed.

Mr. Ryan: Exception.

The Court: Exception allowed.

Mr. Bogle: Will you read the question? (Last question read.)

The Witness: Well, if the cargo booms are topped up, right up against the after swiffters—the after stays—we have to use sea terms in here——

The Court: I understand that term.

The Witness: Well, I should judge then the booms would be away from the standard compass, say, about 70 feet.

Mr. Ryan: May I suggest, Your Honor, at this point, that as I recall the testimony in this case introduced by the Petitioner the cargo booms were not topped up, and this witness is being asked a question here that has [2561] no value in the case at all. The question is, how far were they at the time, as the booms were left there by this man and the others——

The Court: The question is overruled.

Mr. Ryan: An exception, please.

The Court: Exception allowed. Proceed.

Q. (By Mr. Bogle) Captain, was there any cargo loaded on the “Denali” on the same level as the compasses, as either one of the compasses?

A. No.

(Testimony of Erland L. Erlands.)

Q. In your experience in loading these freighters for Alaska, was this the usual or unusual type of cargo?

A. It was a small deck load to what we had been loading.

Q. As to the character of the deck load, was it usual or unusual?

A. No.

Q. Well, I do not know what you mean. Was it a usual deck load?

A. It was the usual deck load for the Alaska run.

The Court: As to the nature of the cargo carried?

The Witness: Yes, sir.

Q. (By Mr. Bogle) Now, Captain, was there any cargo loaded aboard the "Denali" at the time she sailed next to or adjacent to the pilot house?

A. No, sir.

Q. From your experience in loading these vessels, and from your experience as a master, I will ask you if, in your judgment, this cargo which was loaded on the "Denali" would affect her compasses?

A. No. [2562]

Mr. Ryan: That is objected to on the ground that this man has not been shown to be qualified to give an opinion on that particular question, this man having admitted that he never sailed as a captain and he not being shown to have any experience that would qualify him to give testimony of that sort.

(Testimony of Erland L. Erlands.)

The Court: That objection is sustained, on the present showing of his experience in handling cargo of this nature, and observing its effect upon compasses.

Mr. Pellegrini: I ask that the answer to the question be stricken. I believe the witness answered the question.

The Court: Yes, he did, and the answer will be stricken.

Q. (By Mr. Bogle) Captain, what experience have you had at sea in the Alaska run, as an officer, on a ship where you were employed as an officer, with cargo of this character carried on deck?

A. Well, cargo of that kind, we had lots of cargo while I was sailing up there, and never experienced or heard that we had any trouble with the compasses.

Q. Over what period of years did you have experience in carrying this general character of deck cargo?

A. Since 1921.

Q. I mean did you have any experience when you were operating at sea?

A. Yes, sir.

Q. In the Alaska run?

A. Yes.

Q. Over what period of years?

A. Well, I was an officer for three years—I was second [2563] mate for two years on the steamer

(Testimony of Erland L. Erlands.)

“Skagway”, and I also was an officer on the steamer “Cordova”.

Q. During that time were you carrying cargo somewhat similar in nature to that on the “Denali”?

A. Yes, sir.

Mr. Ryan: That is objected to as leading.

The Court: That objection will have to be overruled. I am trying to find out what his experience has been, and that objection will have to be overruled. The Court desires to know what experience he has had touching the observation of the effect of such cargo on compasses.

Q. (By Mr. Bogle) During that period of three years, when you say you were an officer on vessels carrying somewhat similar cargoes, was it a part of your duty to notice what effect, if any, the cargo had on the compasses?

A. Yes, sir.

Q. From that experience do you feel that you are competent to express an opinion as to whether this cargo would have any effect upon the compasses of the ship?

A. Yes, sir.

Q. What is your opinion?

Mr. Ryan: Just a minute; may I ask a preliminary question?

The Court: No; I think not.

Mr. Ryan: If the Court please——

The Court: State your objection.

(Testimony of Erland L. Erlands.)

Mr. Ryan: I object on the ground that this man has stated that he was a second officer, and the evidence in this case shows that a second officer has nothing to do with the loading of cargo or the effect of compasses; [2564] and on the ground that as to the time he served as officer—as to that he has not yet been asked, and has not stated as to what kind of an officer he was, so we are entitled to the inference that he was a third officer.

The Court: The objection is overruled. He may now state what his opinion was.

Mr. Ryan: Exception, please.

The Court: Exception allowed.

Q. (By Mr. Bogle) Do you understand the question, Captain?

A. Yes, sir.

Q. Give your answer.

A. Those days when I was sailing as second and third mate——

The Court: You had better hold him down to the question.

Q. The question was, Captain, from your experience what is your opinion as to whether the cargo loaded on the “Denali” would or would not have any effect upon her compasses, magnetic effect.

Mr. Ryan: May I have a continued objection to this line of examination, and I now call the attention of the Court to the fact that the witness has stated that his experience at sea was as second and

(Testimony of Erland L. Erlands.)

third mate, and the evidence shows that they have nothing to do with this matter.

The Court: The objection is overruled, and it may be understood that the objection runs to any and all questions of this nature, touching the opinion of this witness on this subject.

Mr. Bogle: Yes, Your Honor. [2565]

The Court: It will be so understood.

Mr. Ryan: Also, may I add the ground that this experience of this witness is too remote, too many years before this disaster; 15 years before this disaster.

The Court: The Court has that experience in mind, and also the matter of his experience in loading cargo at the dock here during the time since 1921, and permits him to answer the question as to his opinion under those circumstances, having in mind this kind of cargo loaded on deck.

The Witness: It would be none.

Q. (By Mr. Bogle) That is your opinion?

A. That is my opinion.

Q. Captain, in your experience in sailing to Alaska were you limited to a second and third mate's position—did you hold any other position?

A. Not in the Alaska run.

Mr. Bogle: I think that is all.

The Court: At this point we will take an adjournment, and tomorrow is a Court holiday, being the 11th of November, and Armistice Day, so that

(Testimony of Erland L. Erlands.)

further proceedings in this case are adjourned until Friday morning at ten o'clock.

Mr. Summers: Just before the adjournment, in view of the fact of adjournment, Your Honor, I think Your Honor has not yet ruled, according to my recollection, upon the demand of the Claimants for the admission of the plans. Your Honor did rule as to the objection to the testimony, and that was denied——

The Court: You mean here, just now? [2566]

Mr. Summers: Yes. I am calling Your Honor's attention to a demand made for the plans of the ship, a demand made upon the Petitioner, and am requesting a ruling prior to the adjournment.

Mr. Bogle: Are you making that demand now, Mr. Summers?

Mr. Summers: Mr. Ryan made the demand, and I am calling the attention of the Court to the fact that it has not been ruled on.

The Court: What item in the order of discovery upon the application of the United States of America is that?

Mr. Summers: That was not included in that application, Your Honor, but we did——

The Court: There was something about the ship's plans included in or considered in the application, or some application for discovery.

Mr. Summers: That is true, Your Honor. There was an application made for discovery, either by the Government or by other Claimants, which did

(Testimony of Erland L. Erlands.)

include that, but the one granted by Your Honor finally did not mention that item, according to my recollection.

Mr. Long: That is my recollection, as well.

Mr. Summers: The motion for the order required the production of documents filed by the Government, which was denied by Your Honor, but which included that item, and a motion for discovery filed by Claimants, as I recall it, included that item, but the application by the Government, which Your Honor granted, and which Your Honor gave other Claimants the benefit of, did not include that specific item, and this is the first— [2567]

The Court: I will hear what, if anything, the Petitioner has to say, through its attorneys as to why the Court should not require those plans of this ship to be produced in response to this demand.

Mr. Bogle: We have none whatever, Your Honor. If we have them they will be produced. I have conferred with Mr. Long, and he states that the request was made some time ago and they have not been able to find them.

The Court: Very well. You will produce the company's plans of the "Denali", the owner's plans of the "Denali"?

Mr. Long: If they can be found.

The Court: The plans demanded by Mr. Ryan, if it is possible for you to do so, at the next session of the Court.

Mr. Long: Yes, Your Honor.

(Testimony of Erland L. Erlands.)

Mr. Ryan: May I ask Your Honor to inquire as to how much longer the Petitioner expects to take, because we are trying to expedite our side of the case.

The Court: Mr. Bogle, what is your thought now, if you have anything further to add?

Mr. Bogle: It is difficult, without knowing what the cross examination will be.

The Court: I understand that.

Mr. Bogle: There are two things that might shorten it a little bit. I was going to bring the steward here to prove the adequacy of the steward's department. Is there any controversy about that?

Mr. Ryan: No controversy about the steward's department.

Mr. Bogle: And we have subpoenaed a Government man [2568] to prove the inspection and the issuance of a certificate as to the radio department.

Mr. Ryan: I would like for you to call him.

Mr. Bogle: Well, we will call him. I think it will take us at least two days more to complete our testimony. The rest of our testimony I am going to try to get in as expeditiously as possible, and it might not be that long.

Mr. Long: Just so that the record will be clear, might it be stipulated between the respective Claimants and the Petitioner that the steamer "Denali", at the time of sailing from Pier 2, on May 16th, was in all respects properly manned, and all equip-

(Testimony of Erland L. Erlands.)

ment supplied, so far as the steward's department is concerned?

Mr. Ryan: I have gone as far as I can on this, and I do not know what the fact is, Your Honor. I was trying to narrow the issues as much as I could, and I will stand by the stipulation I made with Mr. Bogle, but I will not broaden it.

Mr. Long: Then we will call the steward, Your Honor.

The Court: The previous order of the Court as to adjournment will now become effective.

(Whereupon an adjournment was taken until November 12, 1937, at the hour of 10:00 o'clock A.M.) [2569]

November 12, 1937,
10:00 o'clock A.M.

Court convened pursuant to adjournment;

All parties present.

The Court: Are there any *ex parte* matters or matters upon agreement? If not, proceed with the case on trial.

Mr. Bogle: If Your Honor please, Mr. Lawton, the third officer has asked whether or not he has been excused. He has a chance to ship out, and I told him that I would have to find out from counsel and the Court whether he could be excused.

The Court: Is there any objection to excusing Mr. Lawton from further appearing as a witness?

Mr. Ryan: No, Your Honor.

(Testimony of Erland L. Erlands.)

The Court: You have none, Mr. Bogle?

Mr. Bogle: No.

The Court: Mr. Lawton is excused from further appearing as a witness in this case.

Mr. Bogle: Thank you. Mr. Erlands, please.

The Court: Mr. Erlands, will you resume the stand? Resume the stand. You have already been sworn?

Mr. Erlands: Yes.

ERLAND L. ERLANDS

resumed the stand for further examination, on behalf of the Petitioner.

Mr. Bogle: I have one more question that I want to ask the witness. [2570]

The Court: You may proceed.

Further Direct Examination.

By Mr. Bogle:

Q. Captain——

The Court: (Interposing) Mr. Bogle suggests that there is one more question that he wishes to ask this witness.

Mr. Ryan: At the outset today counsel for the petitioner was directed by the Court to produce the builders' plans for the "Denali". May I ask that that be done?

Mr. Bogle: Just as soon as I have asked him this one question.

(Testimony of Erland L. Erlands.)

Q. (By Mr. Bogle) Captain, what trim was the "Denali" in when you finished loading your cargo at Pier 2, do you remember?

A. Well, she was in a very good trim. If I don't remember wrong she was down by the stern a little, which is always the best for that type of vessel, to steer better that way.

Q. In your judgment was the cargo properly loaded, and was the ship in proper condition for the voyage on which she was about to—

A. (Interposing) Yes, sir.

Q. (Continuing) —engage in?

A. Yes, sir.

Mr. Bogle: Now, if Your Honor please, on the matter of these plans, the company has no detailed plans of the Steamship "Denali". What plans they had were aboard the ship. We have some plans of a sister ship— [2571] Is it not—of the "Oduna"?

Mr. Long: Yes, and they are approximately the same.

Mr. Bogle: And the "Tanana". We have some drawings of the "Oduna" here, the "Oduna", which is a sister ship.

The Court: They do not purport to be complete, do they?

Mr. Long: No, Your Honor.

Mr. Bogle: No, Your Honor, but I will show these to counsel if there is anything in here.

The Court: Does each blueprint, or photostat, or

(Testimony of Erland L. Erlands.)

drawing, show on its face what it purports to be that you have in your hand right now?

Mr. Bogle: I think it does, Your Honor.

The Court: Then submit them to counsel.

Mr. Bogle: Those are the capacity plans, counsel, relating to cargo (handing plans to Mr. Ryan).

The Court: And then will you make your statement, Mr. Bogle, finally, with respect to what you are able to produce in response to this request?

Mr. Bogle: The only thing that we are able to produce, Your Honor, are certain blueprints—photostats—of other ships—sister ships of the “Oduna”.

The Court: Of the “Denali”, you mean?

Mr. Bogle: Yes, of the “Denali”. I beg your pardon. We have no other plans.

Mr. Ryan: Here is a plan, for instance, that counsel produces that does not say anything about the “Denali” on it at all. [2572]

The Court: Well, I understand—

Mr. Ryan: (Interposing) Or has anything to do with reference to the sister ships of the “Denali”, and it refers to hull numbers. Now, I would like counsel to prove the hull numbers, or the hull number there is the hull number of the “Denali”, because the information that I have is that it is a different hull number.

Mr. Bogle: I cannot say, Mr. Ryan, that this is a sister ship.

(Testimony of Erland L. Erlands.)

Mr. Ryan: No, but you could call Mr. Murphy or somebody who would know.

Mr. Bogle: Well, if it will do any good I will be glad to call Mr. Murphy back.

The Court: Yes. I think that that is a reasonable suggestion. Won't you call somebody whose duty it is and who has information about those drawings?

Mr. Long: The copies that we had in relation to this ship I am advised were aboard the ship for the engineer's use and purposes, and, of course, they were lost with the ship.

The Court: Try to have the official of the company whose duty it is to know and who would know about these drawings—try to have him testify regarding them.

Mr. Bogle: Mr. Summers suggests that he give us the hull numbers of their plans and that we check with Mr. Murphy and see if we have them.

The Court: Very well.

Mr. Bogle: He has given me those numbers, and I will check it with Mr. Murphy. I am perfectly willing [2573] to make this suggestion, Your Honor, that if counsel would prefer to defer this cross examination of this witness until we have checked these plans, it is quite agreeable to me.

The Court: Would you like to do that?

Mr. Ryan: Yes. I would like to know the lay-out first.

(Testimony of G. Edwin Thompson.)

The Court: Very well. Then you have finished your direct examination?

Mr. Bogle: Yes, Your Honor.

The Court: Then you may, Captain, be excused from the stand and you will be subject to be called back on the stand for cross examination.

The Witness: All right, sir.

(Witness Excused)

Mr. Long: I will call Mr. Thompson.

G. EDWIN THOMPSON,

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

The Court: At this time you will not likely be using these documents that have to be folded up, will you?

Mr. Bogle: No.

The Court: Is this one of the exhibits already in, Mr. Clerk?

The Clerk: This is the cargo stowing plan.

The Court: I see. You may proceed. [2574]

Direct Examination.

By Mr. Bogle:

Q. State your name.

A. G. Edwin Thompson.

Q. Where do you live, Mr. Thompson?

A. My home address?

(Testimony of G. Edwin Thompson.)

Q. Yes. Seattle?

A. Seattle, yes.

Q. What is your business?

A. Navigation instruments.

Q. With what firm are you connected?

A. The Northwest Instrument Company.

Q. In what capacity?

A. A member of the firm.

Q. And particularly what does that firm deal in?

A. All kinds of navigation instruments and repairing and compass adjusting.

Q. In the firm of the Northwest Instrument Company who attends to the compass adjustment?

A. My partner, Mr. Kauffman, and myself.

Q. How long have you been engaged as a shore compass adjuster?

A. Twenty years.

Q. What sea experience have you had, Mr. Thompson?

A. None.

Q. And how long have you been engaged in the Port of Seattle as a compass adjuster, or as a shore adjuster?

A. Twenty years.

Q. What other firms are engaged in that business in this port? [2575]

A. There is the firm of Max Kuner Company.

Q. Do you know of any other compass adjusters here?

A. No, not professionally.

(Testimony of G. Edwin Thompson.)

Q. Mr. Thompson, did you swing the "Denali" and compensate her compasses in July of 1933?

A. I did.

Q. Have you your notes that you took at that time?

A. Yes, sir.

Q. Will you produce them?

A. I have my original notes here in this book (indicating).

Q. From those notes have you made up an exact duplicate of the deviation cards which were given to the "Denali" as a result of swinging her and compensating her compasses in July—on July 21, 1933?

A. I have.

Mr. Bogle: Will you mark these, please, Mr. Clerk?

(Documents referred to marked for identification as Petitioner's Exhibits Nos. 62 and 63.)

Q. (By Mr. Bogle) I hand you Petitioner's Exhibits 62 and 63 for identification, and I will ask you if those are exact copies of the deviation cards prepared by you for the standard and pilot house compasses of the "Denali" as a result of swinging her and compensating the compasses on July 21, 1933—in July, 1933?

A. They are.

Mr. Bogle: I will hand those to counsel preliminarily to offering them in evidence.

(Testimony of G. Edwin Thompson.)

The Court: A reasonable opportunity will be given to counsel to inspect them. [2576]

Mr. Ryan: I object to them as copies. They are not the originals. I would like to have the originals produced.

Mr. Bogle: Well, the evidence already shows that the originals were lost, Your Honor, and I am having the man who made the originals from his original notes prepare an identical copy.

Mr. Ryan: What I mean, his original notes with reference to that. This is just a copy that you had made here within the last few days, as I understand it.

Mr. Bogle: Yes. It is what——

Mr. Ryan: (Interposing) Then I object to it.

Q. (By Mr. Bogle) To your own knowledge are these an exact duplicate of the two deviation cards which you prepared and furnished the "Denali" in July, 1933?

A. They are, exactly.

The Court: They were made up when?

The Witness: They were made up a couple of weeks ago.

The Court: For the purpose of this trial?

The Witness: Yes.

Mr. Bogle: Yes, Your Honor.

The Court: And not at the time that you did the work?

The Witness: No, sir.

The Court: In the course of your business and

(Testimony of G. Edwin Thompson.)

in the manner that you usually make a record of that sort?

The Witness: No, sir. The record that we made at that time—those records are left on board. We have a book record and the originals are left on board. [2577]

The Court: On that proof, Mr. Bogle, it seems to me that they are not admissible.

Mr. Bogle: I thought in view of the fact of the proof that the originals were destroyed, the man who prepared the originals and who has his original notes here——

The Court: (Interposing) No. In view of the purpose for which they were made up it seems to me clearly that the objection is tenable. If they were copies made at that time——

Mr. Bogle: (Interposing) No, they were not.

The Court: (Continuing) ——and the originals of such copies were later destroyed they, under the circumstances, might come under the secondary evidence rule. But I do not see how they may now be received in evidence in view of the witness' testimony.

Q. (By Mr. Bogle) Have you your original notes with you?

A. Yes, sir.

Q. In what form are they kept?

A. In a book.

Q. Are there notes with reference to any other compass adjustments of any other boats in the same book?

(Testimony of G. Edwin Thompson.)

A. Yes, sir.

Q. Mr. Thompson, could you tear out the page that relates to this adjustment?

A. I could, but I would prefer not to.

Q. You would prefer not to?

A. Yes, sir.

The Court: Perhaps you can——

The Witness: (Interposing) There is a record on [2578] the other side of that page, too.

The Court: Perhaps you can have it identified. After that is done maybe you might reach some agreement about it.

Q. (By Mr. Bogle) Will you identify the page?

A. This page (indicating in book).

Q. Is this the page in this book that you have handed to me (indicating)?

A. Yes, sir.

Mr. Bogle: I will have that marked.

(Page in book of the witness G. Edwin Thompson marked for identification as Petitioner's Exhibit No. 64.)

Q. (By Mr. Bogle) The page marked Petitioner's Exhibit 64—are those your original notes from which the deviation cards for the "Denali" were made up in July, 1933?

A. Yes, sir.

Mr. Bogle: I would suggest that we have a photostat taken of that, and I will offer it in evidence.

Mr. Ryan: Now, if the Court please, I was not given a full opportunity to look at the original

(Testimony of G. Edwin Thompson.)

records of this man when I went down there pursuant to the Court's order. In view of that I stand on my legal rights. I object to any photostat being substituted. I want to see the original of that, and I want to examine whatever paper or book this man produces, to check whether this statement is correct and to see if there is not anything else in there pertaining to this.

The Court: There is nothing before the Court.

Mr. Ryan: I thought that he was offering it in [2579] evidence.

The Court: No, not yet.

Mr. Ryan: Oh, I beg your pardon.

The Court: He spoke of intending later to do so, but before doing so he was going to obtain a photostatic copy of that page.

Mr. Ryan: I will withdraw that statement, then, if it is not offered yet.

The Court: Very well. Let the record show that the statement made by Mr. Ryan is withdrawn.

Mr. Long: Now, if Your Honor please, I do not want the Court——

The Court: (Interposing) Proceed, gentlemen. A supposed volunteered statement that counsel makes is of no concern to the Court anyway, so there is no need of cluttering up the record with a responding statement by counsel.

Mr. Long: If the Court please, I do not want the Court to get the impression that this man was not given the opportunity to go down there——

(Testimony of G. Edwin Thompson.)

The Court: (Interposing) Proceed. I do not see where this is material.

Q. (By Mr. Bogle) Mr. Thompson, on the opposite page you have the original notes of the adjustment of an entirely different ship, have you not—on the other side of this page?

A. Yes. You could tear it out, if you want to, as long as I get it back.

Q. Yes, I will do that.

Mr. Ryan: I object to that being torn out, if [2580] that is the original.

Q. (By Mr. Bogle) I will ask you if page 64 is the only page in that book which contains any data or any information of any kind or character relating to the swinging of the Steamship "Denali" and compensating her compasses in July, 1933?

A. It is.

Q. Will you tear that page out?

Mr. Ryan: Just a minute. I object to the witness tearing from the original record in that fashion. I want to take that book and check it to see whether there is anything else in that book relating to the "Denali's" adjustment of compasses on this voyage.

Mr. Bogle: He can do that on cross examination.

Mr. Ryan: I am not bound to take the witness' statement on that. I really feel that I have good grounds for suspicion on this particular matter.

Mr. Long: What are your grounds?

(Testimony of G. Edwin Thompson.)

The Court: Just a minute. The Court does not feel, over objection, that one page in a bound book should be permitted to be torn out for the purpose of identification or for the purpose of introduction in evidence.

Mr. Bogle: If Your Honor please, he has testified that that is the only thing in the book pertaining to the adjustment of the compasses on the "Denali", and I am quite willing that counsel should examine the book and examine the witness with reference to any other entries in the book, but I would like to offer that page at this time and ask the privilege of the Court in having [2581] the clerk make a photostatic copy for the witness' own use, so that the witness will have a photostatic copy of it in his possession.

The Court: I can only act upon its admission in evidence at this time. As to having a photostat made up later and using it in substitution for it, the Court would have to entertain and determine that question later.

Mr. Bogle: Then at this time I will offer the page and the book in evidence which relates to the "Denali".

The Court: It is admitted as Petitioner's Exhibit 64.

(Whereupon book of G. Edwin Thompson, containing compass adjustment of the SS "Denali" was admitted in evidence as Petitioner's Exhibit No. 64'.)

(Testimony of G. Edwin Thompson.)

Mr. Ryan: Wait, Mr. Witness. Don't tear that page out.

The Court: Oh, no. The Court has not authorized the witness to tear anything out.

Mr. Bogle: That is my mistake.

The Court: Oh, no; do not tear anything out.

Mr. Bogle: That is my mistake. I thought I was offering the one page.

The Court: Oh, no.

Mr. Bogle: Do I understand the Court's ruling is that the entire book is put in evidence?

The Court: That page with its present attachment is received in evidence in its present physical condition as Petitioner's Exhibit 64. [2582]

Mr. Bogle: Well, that means that we would have to retain the entire book in the records of the Court, does it?

The Court: That means just that.

Mr. Bogle: Then I will withdraw that. I do not want to embarrass the witness by having the book left here.

The Court: The Court has already acted upon it. It has been admitted in evidence. You wish to withdraw the book?

Mr. Bogle: Yes. It covers a lot of compass adjustments over a period of years.

The Court: Do you have any objection, Mr. Ryan, to its being withdrawn?

Mr. Ryan: Yes, I do.

The Court: Very well, then. Proceed.

(Testimony of G. Edwin Thompson.)

Mr. Bogle: Will counsel agree that after examining it, that we may return to the witness any portion of the book that is not material?

Mr. Ryan: I will assure you that I will examine it at the first opportunity, and if I find that that is the only page in the book which relates to this voyage of the "Denali" I will be glad to cooperate fully in the matter.

The Court: Proceed.

Q. (By Mr. Bogle) Mr. Thompson, are you familiar with the custom in the Port of Seattle with reference to compass adjustments?

A. Yes, sir.

Q. What is the custom in this port as to passenger and [2583] freight vessel with reference to compass adjustments?

A. There is no custom.

Q. Under what circumstances are their compasses adjusted?

A. Usually on the request of the master.

Q. Do you know of any common carrier of passenger or freight operating out of the Port of Seattle which has its compasses adjusted at any regularly stated intervals?

A. I do not.

Q. Mr. Thompson, assuming that the Steamship "Denali" on May 13, 1935, while lying alongside the West Seattle Dock on a known heading of the dock West Northwest Magnetic, took bearings of two well known objects in the Port of Seattle and

(Testimony of G. Edwin Thompson.)

checked her compasses; that on the magnetic course of Northeast by North $\frac{1}{2}$ North laid on the chart she again checked her compasses while running on that course; that while lying alongside the Arden Salt Dock on a known heading of East Northeast she again checked her compasses, by standard compass; that on a West-Magnetic course West by North $\frac{1}{2}$ North laid out on the chart she checked her compasses in running that course to Pier 40; that while lying alongside Pier 40 on a known heading of North Northwest Magnetic the ship's compasses were checked; and that on a course of East by South Magnetic the ship's compasses were checked; and again on a heading at the American Can Dock of East Northeast the ship's compasses were checked by taking a bearing of an object at the Colman Creosote Company; and on the course Southeast by East Magnetic the ship's compasses were checked; and that on a heading [2584] of West Southwest of the Pacific Coast Coal bunkers the compasses were checked while lying alongside; and that on the heading of South Southeast, while alongside the General Petroleum Corporation's plant the compasses were checked; and again while lying at Pier 2 on a known heading of East Northeast the compasses were checked, and that on all of those various checks there was no error in excess of two degrees, in your experience of twenty years as a compass adjuster would you say that a prudent, cautious shipmaster should or should not have re-

(Testimony of G. Edwin Thompson.)

quested the vessel to be swung for compensation by shore adjuster?

A. Certainly not, if I was——

Mr. Summers: (Interposing) Just a minute, if you please. That is objected to on the ground that it is not shown by that question that the compass was checked against points the position or location of which was known. In other words, as far as the question is concerned the points against which the compass was checked must be accurately identified or known with respect to the correction on the compass or compasses.

Mr. Bogle: I asked him to assume in the question if he checked on these bearings on known objects in the Port of Seattle or on known headings of docks and on magnetic courses to steer.

The Court: Is that a part of the question?

Mr. Bogle: That was a part of my question. I asked him to assume that.

Mr. Summers: Mr. Bogle says, "known objects", but he did not assume in the question that the position of [2585] those objects—for instance, the Smith Tower—he did not assume in that question that the compass position or location of the Smith Tower has been known.

Q. (By Mr. Bogle) If the position was known in the port upon which he checked, would it make any difference in your answer, whether I told you what the actual object was or not, if it was told on the check or known to the master?

(Testimony of G. Edwin Thompson.)

A. If he knew the object he could check the compass.

Q. Yes, I have asked you to assume that.

The Court: Objection overruled, in view of the witness' answer.

Mr. Ryan: I was going to add a further objection——

The Court: (Interposing) You may make a further objection if you wish to make any.

Mr. Ryan: Yes. I object on the further ground that it does not assume facts as established by the record.

The Court: The objection is further considered by the Court upon that further statement, and the objection is overruled.

Mr. Ryan: May I have the last five or six words of the question read?

(Portion of question read as follows:

“Would you say that a prudent, cautious shipmaster should or should not have requested the vessel to be swung for compensation by shore adjuster?”) [2586]

Mr. Ryan: If the Court please, I did not catch those words when the question was asked. I object on the ground that this witness has not been qualified to give an opinion with respect to what a shipmaster should do. He can give his own opinion, based on his experience, but as to what a shipmaster should do, or what the duty of a shipmaster

(Testimony of G. Edwin Thompson.)

is, that is entirely outside of the ken of this man. He has admitted he has never had any experience at sea whatever.

The Court: It relates to this subject, however, of adjusting compasses, which he has testified he is experienced in, as I understand it.

Mr. Ryan: The thought I had is that he is being asked in this question to state what a ship master should do, not what this witness thinks should be done on those facts, and that sort of thing. Suppose I should say a doctor should have treated this man for this disease, or something of that sort—I am not a doctor, I cannot pass on what the duties of a doctor are, or what his competency is, or how he should diagnose it—or what a ship master's ideas of it are. This man is in an entirely different line of work.

The Court: If, however, you are skilled in the use of some instrument the doctor ordinarily uses the Court would think the question would be proper.

Mr. Summers: May I supplement the objection to this extent; I submit the question might be proper if counsel asked under those circumstances what, in his opinion, would be the condition of the compasses with respect to deviation, or otherwise, not as the [2587] question is propounded, what should a ship master do.

Mr. Ryan: Might I further suggest that the record already shows that instructions are issued to ship masters by ship owners with respect to their

(Testimony of G. Edwin Thompson.)

duties, and with respect to what they shall do, and the managing officers of ship owners have certain duties in connection with the compasses. All that is slurred in the form in which this question is asked.

The Court: The matter as further considered, upon these further statements, the ruling of the Court heretofore made will stand.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) Mr. Thompson, assuming the question that I have just asked you, in your judgment as a compass adjuster of some twenty years experience, would you say that the compass of the "Denali" was or was not in proper compensation, proper adjustment, for the voyage upon which she was then about to engage?

Mr. Ryan: Just a minute; has the last question been answered?

Mr. Bogle: That is the further question, that they suggested I should have asked him before.

Mr. Ryan: I suggest that the question should not be asked until the witness answers the question that has been asked.

The Court: I do not know of any unanswered question.

Mr. Ryan: What was that question?

The Court: The Court would be glad to have it read.

(Testimony of G. Edwin Thompson.)

Mr. Ryan: I haven't heard any answer. (Answer read [2588] as follows:

“A. Certainly not, if I was——”)

Q. (By Mr. Bogle) Is there anything further you want to add to that?

A. No.

Q. Then answer the question which is before you.

A. I have lost the question now.

Q. This is the first question: Assuming the master took the bearings on the various courses and various headings that I outlined to you, the first question is whether or not, in your judgment, a competent ship master should have asked for an adjustment by a shore adjuster?

A. I would say not.

Mr. Ryan: To save repetition may I ask that the objections of myself and Mr. Summers, on the grounds stated, may be understood to be repeated to each one of the questions along this line of examination, and that an exception may be noted to each question.

Mr. Bogle: It is immaterial to me, Your Honor.

The Court: It is so understood.

Q. Have you any further answer that you desire to make to that?

A. I could say this, in swinging on all those headings there would be a course in each quadrant, and if nothing over two degrees was found there would be no large deviations any place.

(Testimony of G. Edwin Thompson.)

Q. Now, answer the other question. Read it.
(Question repeated as follows:

“Q. Mr. Thompson, assuming the question that I have just asked you, in your judgment as a compass adjuster [2589] of some twenty years experience, would you say that the compass of the ‘Denali’ was or was not in proper compensation, proper adjustment, for the voyage upon which she was then about to engage?”)

A. I would say that they were within very close working limits, anyway.

Q. Mr. Thompson, did your firm do the compensating of compasses for the Alaska Steamship Company, did they in 1935?

A. Some of it.

Q. From whom do you receive your instructions with reference to compass adjustments?

A. From the superintendent’s office.

Q. Do you know his name?

A. Mr. Murphy at that time.

Mr. Bogle: I think that is all, Your Honor.

The Court: You may cross examine.

Cross Examination.

By Mr. Ryan:

Q. All orders that you have ever gotten from the Alaska Steamship Company for the adjustment of compasses have been from Mr. Murphy, haven’t they?

A. Yes, sir.

(Testimony of G. Edwin Thompson.)

Q. You haven't the vaguest idea as to whether Mr. Murphy decided for himself the compass should be adjusted, or whether somebody else did, have you?

A. I have some idea, yes.

Q. It is a guess; it is not based on any personal knowledge, [2590] is it?

A. Yes. Very often the master comes in and says "I am going to request to have the compasses adjusted."

Q. Did he do that in this case?

A. I can't remember that.

Q. What did he come for, to try to enlist your cooperation in inducing Mr. Murphy to spend the few dollars necessary for that purpose?

Mr. Bogle: What was that question? (Question read.)

The Witness: The answer is no.

Q. Then why does he do it?

A. He happened to be in there on other business, probably.

Q. He has no authority at all to give you the order, isn't that so?

A. Yes.

Q. You know he has no authority?

A. Yes.

Q. What, in your opinion, does good practice with reference to vessels engaged in the Alaska trade require with reference to the frequency of adjustment of compasses?

(Testimony of G. Edwin Thompson.)

A. I would say whenever it needs it.

Q. What interval of time, how frequently?

A. Whenever it needs it.

Q. Did you or did you not state on August 7, 1935. in the City of Seattle, in the offices of the Northwest Instrument Company, to Lewis L. Stedman, of Seattle, as follows: Good practice, particularly with reference to vessels engaged in the Alaska trade, would require that compasses be adjusted not less frequently than once every two years. However, this practice is not universally [2591] followed. At least, the Alaska Steamship Company does not follow this practice." Did you or did you not so state?

A. I did not say that.

Q. Did you state any part of it?

A. Probably I might have said part of it.

Q. All right; what did you state?

A. I didn't mention the Alaska Steamship Company, in any case. I didn't mention the Alaska boats, either.

Q. Well, what did you state about good practice with reference to the frequency of adjustment of compasses on vessels engaged in the Alaska trade, at that time and place?

A. I couldn't remember every word I said, but I did some of it.

Q. What is the substance of what you said at that time?

(Testimony of G. Edwin Thompson.)

A. We were not discussing the Alaska boats. It was more other companies' boats.

Q. What did you state?

A. I did say to him there were certain companies operating boats here that had not had their ships adjusted for a good many years.

The Court: You mean had not had their compasses adjusted?

The Witness: Had not had the compasses adjusted on their boats for several years.

Q. Is that all you said?

A. I said more than that, but that is the substance of what I said.

Q. What else did you say? [2592]

A. That is the substance of what I said.

Q. Do you deny that you stated at that time and place to Mr. Stedman as follows, "Good practice, particularly with reference to vessels engaged in the Alaska trade, would require that compasses be adjusted not less frequently than once every two years." Do you deny you stated that?

A. I deny I stated those words.

Q. Did you state the substance of it?

A. I didn't say that.

Q. What did you say?

A. I just told you what I said.

Q. What happens to a ship when she is laid up in a boneyard over a long period, out of operation, so far as—what happens to her?

A. I suppose she lays there.

(Testimony of G. Edwin Thompson.)

Q. All right. Well, what is the result of her lying there?

The Court: With respect to what?

Q. With respect to her compasses and her magnetism, and that sort of thing?

A. It depends on what heading she is on, and what the conditions are there; if there is any jarring, if she is lying still, how long it is, what the surrounding iron is—there is a thousand and one things that would enter into it.

Q. Will you go on and state some of the conditions which would affect the compasses of a ship?

A. No two boats are alike.

Q. Will you state the conditions that would affect the compasses of a ship, or ships lying in a boneyard for a [2593] long period, out of operation?

A. I couldn't say anything definite. Nothing definite happens. No two boats are alike, or would act the same.

Q. Have you ever discussed compass adjustment with Mr. Murphy?

A. Sure.

Q. If Mr. Murphy has testified here that a ship under those conditions acquired retained magnetism, and in such a condition a shore compass adjuster will refuse to adjust her compasses until she got rid of it in some way, do you agree with that statement?

(Testimony of G. Edwin Thompson.)

Mr. Bogle: I shall object to that. If Mr. Murphy so testified, which is not in accordance with my recollection, I think counsel should refer to Mr. Murphy's testimony.

The Court: It is assuming that Mr. Murphy did so testify. Will you kindly condition your question in that way?

Mr. Ryan: Yes, Your Honor.

Q. (By Mr. Ryan) Assuming that Mr. Murphy so testified.

A. Some ships do take on a temporary magnetism, yes, and if the compass were adjusted the minute that she left the shipyard it would only be a very few days until it would lose that magnetism and the compass would be off again, and we do very often refuse to adjust a compass until the boat has had a good shaking up. In fact, after a boat has laid up we put her on an opposite heading to what she has been lying and back her up two or three times to give her a good shaking down, to settle the magnetism. On some ships it makes some deviation, [2594] and on some it does not.

Q. I am sorry, but in asking you the question about your statement to Mr. Stedman I mentioned the date as August 2nd, 1935, and it was August 7th, 1935. Does that make any difference in your answers?

A. No. I would remember the day.

Q. It was not made at any time in August, 1935, or any other time, is that right?

(Testimony of G. Edwin Thompson.)

The Court: The subject is covered by a preceding question. Proceed.

Q. Now, hasn't it been the practice of the Alaska Steamship Company in the last few years, on taking ships out of a boneyard, on account of this retained magnetism in them, to send them up on one voyage to Alaska first, to shake it out, and then have the compass adjusted at the end of the first voyage of the season?

Mr. Bogle: I object to that, if Your Honor please, unless it is limited to some specific time; at least sometime prior to the accident in question. He says "the last few years". I think Your Honor limited the period to prior to the accident.

The Court: The objection is overruled.

Mr. Long: An exception, Your Honor.

The Court: Exception allowed.

The Witness: I do not believe they have any general practice.

Q. (By Mr. Ryan) Well, that danger or hazard does exist of this retained magnetism being in a ship after she has been lying in a boneyard for a long period on one heading, isn't that so? [2595]

A. There is a possibility of it.

Q. Well, it is a scientific fact, isn't it, Mr. Thompson?

A. No.

Q. It is not a scientific fact?

A. Not necessarily.

Q. What kind of a fact is it?

(Testimony of G. Edwin Thompson.)

A. Well, it does happen, according to what heading she is on.

Q. Can you name me any instance of a ship which has lain for a long period in a boneyard, on one heading, that has not been affected by retained magnetism?

A. How much would you say it was affected?

Q. I am asking you. You are the one who brought this up. You give me the name of a ship that has not been, and where you have looked at her compasses after this happened.

A. The "Vermont", which was laid up for eight years out here in Lake Union.

Q. The "Vermont"?—When did you adjust her compasses?

A. I adjusted them twice.

Q. Is that in this book here?

A. No.

Q. Where is your book with reference to the "Vermont"?

The Court: We are not going to go into such collateral matters as that.

Mr. Ryan: If Your Honor please, I would like to check him on that. I mean I think we can demonstrate that——

Mr. Long: (Interposing) That is objected to, Your Honor, as being a collateral issue, entirely collateral.

The Court: If he has his book here he may produce [2596] it.

(Testimony of G. Edwin Thompson.)

Q. (By Mr. Ryan) Have you the other records of your company with reference to the adjustment of the compasses of the "Denali" in July, 1933?

A. What was that, again? (Question read.) That is all the record we have.

Q. You have some other books there.

A. This is all we have.

Q. You do not keep books down at your office, is that it?

A. Yes; we do.

Q. You have records of the adjustment of the compasses of the "Denali" in those books, haven't you?

A. No. That is the record of the adjustment.

Q. You do not have invoices, you do not have ledgers, day books, journals, anything like that, relating to the "Denali"?

A. There is no record of the adjustment in them.

Q. There is no reference to the "Denali" in those books, is that what you mean to say?

A. There is a bill for adjusting, and that is all.

Q. Have you got that?

A. No; not here.

Mr. Ryan: I would like to see that, and in view of the fact that he will have to get that, Your Honor, I ask that he get the record with reference to the "Vermont".

Mr. Bogle: It is already here in evidence, Your Honor; it is an exhibit that has been already produced.

(Testimony of G. Edwin Thompson.)

Q. (By Mr. Ryan) Wasn't this "Vermont" anchored in Lake Union? [2597]

The Court: Just a moment, Mr. Ryan; unless the statement of counsel for the Petitioner is erroneous about that bill or voucher being here in evidence, the witness is relieved from the demand which you just made for the production of that particular bill. You may propound your question.

Mr. Ryan: Well, Your Honor, I got the impression when I was down to the Northwest Instrument Company that they had a book that related to this, and that would contain their record of this.

The Court: You can subpoena that as part of your case.

Mr. Ryan: All right.

Q. (By Mr. Ryan) The "Vermont" was out at anchor in the open lake, wasn't she?

A. Yes; alongside of three other boats.

Q. Certainly; and they would swing around with the tide, wouldn't they?

A. No.

Q. How do you know that?

A. They had anchors both fore and aft to hold them steady.

Q. Were you there all the time?

A. No.

Q. They were not near any other steel vessels, were they?

A. These four were by themselves.

Mr. Long: These four?

(Testimony of G. Edwin Thompson.)

The Witness: These four vessels.

Q. Did you examine the compasses of the "Vermont" before she was laid up?

A. No. [2598]

Q. Then how do you know that the laying up did not affect them?

A. We adjusted it when she left the shipyard, and then we adjusted it again—

Q. Did you adjust them when she left the shipyard?

Mr. Long: Let him finish his answer.

Mr. Ryan: The answer is no.

The Court: Objection overruled.

Mr. Ryan: He just answered no.

Q. (By Mr. Ryan) Then you didn't know of your own personal knowledge what the condition of the compasses of the "Vermont" was before the lay-up?

A. No.

The Court: Which illustrates the undesirability of all this collateral matter.

Mr. Ryan: I understand, Your Honor. I was hoping that it would be helpful, but I find out he didn't even know.

Q. (By Mr. Ryan) Now, assuming that a ship which has been laid up for a considerable period has acquired this retained magnetism that you have mentioned, what should the shipowner do with that

(Testimony of G. Edwin Thompson.)

ship before he loads cargo on it, or sends it to sea on a voyage, a commercial voyage?

A. Take deviations.

Q. What should he do about getting rid of that retained magnetism before he loads cargo and sends it to sea; that is, what would good and safe practice, in your opinion, require to be done?

A. Move the ship around from one heading to another.

Q. Take it on a shake-down cruise, as Mr. Murphy described [2599] it--assuming he did so describe it--isn't that so?

A. You could call it that.

Q. And there have been such shake-down cruises up to Alaska and back, the first voyage of the season, often, have there not?

A. Probably.

Q. Well, you know of them of your knowledge, don't you?

A. We don't know anything about what happens to the boat from one trip to the other. We do not keep track of them.

Q. You know about these so-called shake-down cruises, the first voyage up to Alaska and back, until they get rid of that retained magnetism? You have often heard of that?

A. They do not make the trip for that purpose.

Q. Well, that expression, "shake-down cruise", with reference to these ships that are subjected to this unusual hazard of retained magnetism out here

(Testimony of G. Edwin Thompson.)

in this boneyard, is a very common one around Seattle, among ship masters, ship owners and their compass adjusters?

A. It is generally good practice to put the boat on several headings before they have the compass adjusted.

Q. Well, you have to do more than that, just put her on several headings; you really ought to get her out to sea and put her on the opposite course, or at right angles to the course, and back at full speed, and get her out in the seaway, and shake out as much of that retained magnetism as you can, shouldn't you? I mean if you follow safe practice?

A. The more they could do that the better, of course.

Q. Why, certainly. A ship which comes out of a boneyard, after lying there for a long period, is in a peculiar [2600] condition, in that something should be done to get rid of that magnetism she acquires; that is so, isn't it?

Mr. Bogle: I think I shall object to that on the ground that it is too indefinite. He has used the phrase "long period", and I think he should specify what it was.

The Court: The objection is overruled. This is cross-examination, and if any further explanation is needed, or is appropriate, you may redirect. Read the question. (Last question repeated.)

The Witness: I would say yes.

Q. (By Mr. Ryan) Now, a ship which has ac-

(Testimony of G. Edwin Thompson.)

quired this retained magnetism by lying up for a considerable period in a boneyard becomes, in a substantial sense, a magnet herself, doesn't she?

A. A temporary magnet.

Q. Yes; and if she has been lying up, say, on a West Northwest heading, the red pole of the magnet would be her starboard bow and the blue pole her port quarter, wouldn't it, if you sent that ship out to sea?

A. Yes.

Mr. Long: I didn't get the answer.

Mr. Ryan: The answer was yes.

Mr. Bogle: Did you answer that question?

The Witness: Yes.

The Court: Make your answers more audible.

Q. (By Mr. Ryan) If that ship were taken out to sea, and then she were set on that same heading that she had been lying up all that time, and the engines were kept full speed ahead, and the vibrations shaking her all the time, and everything else, all that would tend to further [2601] increase her magnetism, wouldn't it, provided she kept on that same heading?

A. Yes.

Q. Then the first time that ship would make a swing to the right, toward the North, a substantial swing, say 30 degrees or more toward the North, then after she stayed on that a while, on that new heading, there would be a tendency for that compass

(Testimony of G. Edwin Thompson.)

to swing back toward the heading on which the ship was lying during the lay-up, isn't that right?

A. That is right.

Q. That is a well known principle of hysteresis?

A. It is.

Q. That is, it is a well known fact that iron has what is called a magnetic memory, isn't that so?

A. You could call it that, yes.

Q. So that after a substantial period has gone by on this new course there is a lag back to the old course—I mean back to the heading on which the ship had been lying, isn't that so? [2602]

Q. Has the Alaska Steamship Company ever given you a free hand and unrestricted authority to go on board their ships here in Seattle and examine their compasses and determine for yourself that the compasses should be adjusted, without any order from Mr. Murphy?

A. No.

Q. You could do that, could you not, if you were given such authority?

Mr. Bogle: I object to that.

A. No.

Q. (By Mr. Ryan) You could not do it?

A. No.

Q. Why not?

A. You could only check it on one heading as lying alongside of any dock, but that would not—

Q. (Interposing) But if they gave you authority to take the ship out here, or send her out on a

(Testimony of G. Edwin Thompson.)

shake-down cruise to get rid of her retained magnetism, and then come back, and then do your adjusting, and left the whole thing to you, to examine the compasses and determine what was necessary, you could easily do that here, could you not—your company?

A. Not alongside——

Q. (Interposing) That is, if you had the authority.

A. Not alongside the dock unless we looked at the records.

Q. I see. You do not get any real information from bearings taken while the ship is lying alongside the docks here in Seattle, is that what you want to say?

A. Yes, you do. You get a very definite deviation on that heading. [2603]

Q. Say there is an iron crane on the dock, or an iron roof on the transit shed, or machinery around, or the cargo boom is swung out, or the blocks are out and the falls—all those things would affect the compasses, would they not?

A. There are no cranes on any of these docks.

Q. Well, eliminating the cranes, would not all those things that I have mentioned affect the compasses on the ship?

A. It would depend on the mass; how much mass there was to it.

Q. Yes, certainly, but it would affect the compasses, wouldn't it?

(Testimony of G. Edwin Thompson.)

A. Yes; if there was enough mass.

Q. And by "mass" you mean weight and volume, and that sort of thing?

A. Volume, principally.

Q. Yes. And when you adjust compasses you do it away from the docks, don't you—you take your bearings and all that sort of thing?

A. Yes, sir.

Q. Now, what are the advantages of an adjusted or compensated compass over one which is not adjusted or compensated?

A. On a compensated compass the errors are reduced to a minimum.

Q. What other advantages are there to a compensated compass over an uncompensated compass?

A. That is the only advantage.

Q. That is the only advantage? [2604]

A. Well, we leave a record of what the residual deviation is.

Q. Well, you know what over-compensation is, and what under-compensation is, don't you?

A. Yes.

Q. Well, what is over-compensation?

A. Well, if you over-compensate it, you would cause an error.

Q. Certainly. An erratic error, wouldn't you—I mean it would be irregular on the headings?

A. It depends on how much it was over-compensated.

Q. Yes, but I mean the tendency would be to cause irregularity?

(Testimony of G. Edwin Thompson.)

A. Only on large deviations.

Q. That is right. It causes large deviations and irregularity on the headings, does it not?

A. No. Large deviations cause the compasses to be unsteady or irregular.

Q. And what does under-compensation do?

A. The same.

The Court: I suggest that unless you seek to lay the foundation by showing that these compasses on the "Denali" were over-compensated, you need not take up the time of the Court by having this general discourse on the subject.

Mr. Ryan: I think Your Honor misunderstands what the term means.

Q. (By Mr. Ryan) Now, when a compass needs adjustment, what is the condition of the compass before she needs adjustment? [2605]

A. She has large errors.

Q. Well, one of the ordinary things is that she is under-compensated or over-compensated as a result of acquiring magnetism in some new direction, or something of that sort, isn't that so?

A. Yes. Either acquiring it or losing it—having less.

Q. Now, what are the various reasons which require compasses to be adjusted?

A. Alterations on the ship—

The Court: (Interposing) That is of such a very general nature as to be of no benefit to me, it seems to me, at this stage of the trial.

(Testimony of G. Edwin Thompson.)

Mr. Ryan: If the Court please, this is the first compass adjuster that has been called in the case. He has been called as an expert witness, and this cross-examination is necessarily going to be extensive because this point I consider very important.

The Court: You do not need to have him give a lecture on the full science or the whole field of compass knowledge. Just get to the things that are involved here. All these other general scientific elements and phases of the compass are not involved here.

Mr. Ryan: I see. I will abbreviate it as much as I can, Your Honor.

Q. (By Mr. Ryan) Is it not a fact that among the general advantages of a compensated compass over an uncompensated compass is this, that a compass which is not compensated properly and has large errors would behave very erratically on changing course and ought never to [2606] be relied on as to how much the course had actually been changed, whereas with all the errors reduced to the lowest possible minimum good results would be obtained all around. Isn't that true?

A. Yes, sir.

Mr. Bogle: I object to that as not being proper cross-examination. None of this was gone into on direct.

The Court: What about that?

Mr. Ryan: Why, he was called to testify as to the necessity and practice of compass adjustments.

Mr. Bogle: That is right; the practice.

(Testimony of G. Edwin Thompson.)

Mr. Ryan: I do not know of any more relevant examination in my life.

The Court: Of course, at this stage of the proceeding it is not for the Court to determine the weight of it, except that I would like counsel to know that I do not see how it is going to help me decide this case, to have this man state his entire learning on this subject to compass adjustments. I would like very much to hear what this witness says on cross, as well as on direct, relating to the particular phases of this deviation that the claimants insist may have had something to do with this accident. I would be very much enlightened to hear on cross, as well as on direct, anything touching on that, but as far as having this witness testify as to the whole theory and scientific analysis of compass adjustment, it does not seem to me to be very pertinent to the matter. You may proceed.

Mr. Ryan: Well, in view of Your Honor's statement [2607] I will abbreviate it on the other matter and bring it in line with what Your Honor suggests.

Q. (By Mr. Ryan) If the difference in the deviations noted between the steering and standard compasses was different in 1935 from that shown on the cards in 1933—from that shown on the deviation cards in 1933, would not that indicate a change of some sort in the compasses?

A. Yes, sir.

Q. And assuming that there is no current, if a ship continually makes good a course to one side

(Testimony of G. Edwin Thompson.)

of the course set by compass, is not compass deviation indicated?

Mr. Long: I object to that as improper cross-examination, Your Honor.

The Court: Objection overruled.

A. Not necessarily.

Q. (By Mr. Ryan) Well, what else could possibly be indicated under those circumstances?

A. Will you read the other question again, exactly?

The Court: Read that other question.

(Question read as follows:

“And assuming that there is no current, if a ship continually makes good a course to one side of the course set by compass, is not a compass deviation indicated?”)

A. I would say not.

The Court: At this time we will take a five minute recess.

(Recess)

The Court: You may proceed. [2608]

Q. (By Mr. Ryan) Does not good and safe practice require that if you want to ascertain what the deviations are of a compass, or to examine a compass properly, the cargo booms should be secured for sea, and the other gear around of an iron or steel nature should be secured for sea?

A. On some boats they run with the booms up all the time, and they like to have the compasses

(Testimony of G. Edwin Thompson.)

adjusted in that position. Others have them down in the rest position which is—the booms—these wooden booms on these boats have no effect on these compasses.

Q. You say that they would have no effect on the compasses?

A. No, they would not.

Q. Isn't there at the end of each one of the booms as Mr.—assuming Mr. Erlands testified yesterday that at the end of each one of these booms there is an iron band, together with a gin block, doesn't that affect the compasses?

A. They are never close enough to the compasses to affect the standard compass.

Q. So it makes no difference in your opinion whether the booms are up or down, so far as the compasses are concerned, is that right?

A. That does not affect the standard compass at all.

Q. Not a particle?

A. No.

Q. Not even worth mentioning?

A. No.

Q. Now, isn't it a fact that whenever the booms were down and there was an adjustment of compasses made, you always [2609] made a record of it?

A. Not always.

Q. Isn't that shown in your book time and time again?

A. In some cases.

(Testimony of G. Edwin Thompson.)

Q. And it is not there with reference to the "Denali", is it?

A. No.

Q. Now, if the booms were down on the "Denali", you would have made a note of that, as affecting your examination, wouldn't you?

A. No.

Q. Well, you did in the other cases, didn't you?

A. In the case of some, but not all.

Q. Well, I just happened to glance at a few pages. Look at page 3481, the "Redondo". What is your note there about booms?

A. That is not——

Q. (Interposing) Page 3481; what is your note there about booms?

A. That is not my note.

Q. Whose note is it?

A. My partner's.

Q. Mr. Kauffman's?

A. Yes, sir.

Q. And he is senior to you in that firm, is he?

A. No.

Q. Well, how long has he been doing that work, doing compass adjusting?

A. We started in business together.

Q. Anyway what is the note there about the booms? [2610]

A. "No. 2 booms down".

Q. No. 2 booms down?

A. Yes, sir.

(Testimony of G. Edwin Thompson.)

Q. Look at 3573, the "Dellwood"; what is the reference there about booms?

A. "No. 2 booms down."

Q. On page 3590, the "Tanana", what is there with reference to booms—is that his or yours?

A. That is his. 3590?

Q. Yes.

A. "No. 2 and 3 booms down".

Q. What is the point of making those notations if they have nothing to do with compass adjustments?

A. You have picked out three over one hundred ships here that have it marked.

Q. But what is the point of having the record of that?

A. Very often if it would make a bad condition, why, they would make a note of it. If there is no bad condition, why, then, we make no note of it.

Q. I see. Now, one of the forward booms of the "Denali" was made of steel, wasn't it?

A. I don't know.

Q. Well, if it was, then it would make a very important difference, wouldn't it?

A. Not necessarily.

Q. Well, in all probability, wouldn't it?

A. You see when the forward booms—there are probably four booms there or more——

Q. (Interposing) If there was a forward boom that was made of steel, it would make a lot of difference—— [2611]

(Testimony of G. Edwin Thompson.)

A. (Interposing) No.

Q. Do you mean to say that swinging an iron boom in front of the compass does not affect it?

A. If it is over the No. 1 hold it would not.

Q. But you don't know where it was?

A. That is what I said.

Q. All right.

A. I said that I didn't know there was one.

Q. Now, isn't Lecky a standard treatise on compasses?

A. No.

Q. He is not?

A. No, but he is on seamanship.

Q. I see. What is a standard authority on compass adjustment.

A. I don't recall the names of any right offhand now, but there are several.

Q. By "Lecky", I mean Captain Lecky, L-e-e-k-y, and I refer to his book, "Wrinkles in Practical Navigation and Compass Adjustment". You understand that, don't you?

Mr. Bogle: I object to that as improper cross-examination.

The Court: Objection sustained.

Q. (By Mr. Ryan) Now, suppose the azimuth mirror has not been used for a long time and has been taken out—kept around the chart room and around—isn't it likely that that azimuth mirror, when it is put back would have an error?

(Testimony of G. Edwin Thompson.)

A. They are not very delicate instruments. They will stand a lot of handling.

Q. Yes, but they have errors, don't they? [2612]

A. They can have errors, yes, sir.

Q. You have often seen azimuth mirrors that have errors, haven't you?

A. Sure.

Q. And you have allowed for the error?

A. No.

Q. You have never allowed for it?

A. No; we repair them.

Q. You repair them?

A. Yes, sir.

Q. So that you do not have to allow for them?

A. No.

Q. But you would not use an azimuth mirror until you had ascertained what the error was, if any, would you?

A. No, we don't.

Q. Now, doesn't the fact that the smokestack of a ship is heated or not influence the compass?

A. Not as far away as it would be on this ship.

Q. How far away was the nearest part of the stack of the "Denali" to her standard compass, if you know?

A. I don't know. I would have to guess.

Q. Well, then, how do you know that it is that far away?

A. Well, I know from experience.

(Testimony of G. Edwin Thompson.)

Q. You have been on ships that have had heated stacks, and you know what their influence is on their compasses at sea, don't you?

A. Yes, sir.

Q. On what ships have you served on?

Mr. Bogle: I object to this as improper cross-examination. [2613]

Q. (By Mr. Ryan) I thought you said on direct that you hadn't served at all on any ship at sea.

The Court: I am going to let that stand as testing his knowledge.

Mr. Bogle: I see.

The Court: But it is not going to help me to decide the case, I do not think, but if Mr. Ryan wants to clutter up the record with that sort of thing and consume time in doing so, he will have the right to do so and I will not exclude him from doing it.

Mr. Ryan: In my brief, if the Court please, I show to Your Honor the importance of some of the matters that this man has testified to this morning, and if Your Honor wants to hear argument on it I will——

The Court: (Interposing) I do not. You are simply taking up a lot of time for nothing, in my opinion.

Q. (By Mr. Ryan) Isn't it a fact that the force and the amount of change and the duration of retained magnetism in a ship are uncertain?

A. Yes.

(Testimony of G. Edwin Thompson.)

Q. And retained magnetism is that magnetism which is induced into the ship by the magnetic influence of the earth when she has been lying with her head in one direction for a considerable time, isn't that so?

A. That is one name for it, yes.

Q. And one of the first noticeable results of retained magnetism acquired by a ship from lying up on one heading for a long time is that the alteration of the [2614] course by compass will have to be larger than the alteration which it is desired to make good?

A. Yes, but it is very temporary.

Q. Well, you don't know how temporary it is, do you, under the conditions of this case?

A. Only very temporary.

Q. Yes. Well, if the ship pursues her courses on the voyage on the same heading that she was on—well, I think we have covered that. I will strike that. Isn't it a fact that a compass—that a ship which has retained magnetism will tend to cause the compass of the ship to be over-sensitive on some courses and too sluggish on others, and that on the other hand a compass carefully compensated will behave equally well on all courses?

Mr. Bogle: I would like to have him, Your Honor, refer to the page and volume that he is reading from.

Mr. Ryan: I am asking him a plain question.

The Court: Read the question.

(Testimony of G. Edwin Thompson.)

(Question read as follows:

“Isn’t it a fact that a ship which has retained magnetism will tend to cause the compass of the ship to be over-sensitive on some courses and too sluggish on others, and that on the other hand a compass carefully compensated will behave equally well on all courses?”)

The Court: Objection overruled.

A. I would say very minutely.

Mr. Bogle: What was the answer?

The Witness: I would say very minutely.

Q. (By Mr. Ryan) Have you ever measured it under the [2615] conditions that obtained in this case?

A. I did not measure it in this case, no.

Q. You haven’t any idea what the amount is in this case, do you?

A. In this particular case?

Q. Yes.

A. No, but I have some idea, yes.

Q. You don’t know what courses the vessel followed, even?

A. Yes, I know what courses the vessel followed.

Q. You don’t know all the courses the vessel followed, do you?

A. Yes, sir. I have heard you say where she had been. I heard you read or I heard read the different courses that she was put on after she left the shipyard.

(Testimony of G. Edwin Thompson.)

Q. Now, what was the condition of the compasses of the "Denali" which required adjustment in July, 1933, when you adjusted them?

A. You mean how much deviation did they have?

Q. What was the trouble with them? Why did you have to adjust them at that time?

A. They had a small error.

Q. Have you a record of that?

A. No.

Q. As to what that error was?

A. No.

Q. Do you know what the deviations were——

A. (Interposing) No.

Q. (Continuing) ——and what the defects were in the compasses at that time?

A. There were no defects. [2616]

Q. Have you any record of it at all?

A. Yes.

Q. What record?

A. Well, the compasses were not repaired. We examined them carefully before we went out, and there were no repairs made, so the compasses were not repaired.

Q. Have you any deviation cards of the compasses of the "Denali" just preceding your adjustment of them in July, 1933?

A. No.

Q. You don't know what they show?

A. They would not——

(Testimony of G. Edwin Thompson.)

Q. (Interposing) I do not ask you to guess, if you don't know. Do you know. Can you tell me what——

A. (Interposing) The cards would not show the deviations just before she was adjusted.

Q. Well, then, why did you adjust the compasses at that time? What was the reason for doing it?

A. Because they had acquired some error.

Q. Yes, but what was the error?

A. I don't know what the amount was.

The Court: Mr. Ryan, if you wish to——

Mr. Ryan: (Interposing) If the Court please, I have not had a chance to examine this thing here——this book that he has produced. I ask that he be held here subject to further cross-examination until I have an opportunity to do that.

The Court: As I started to suggest, Mr. Ryan—I think it is covered, but if you wish that to be done, it will be done, but the Court would like to have the [2617] benefit of any information that this witness may have of any condition or circumstance which—if any—which he has not testified to; that has any bearing on this question whether or not these compasses on the “Denali” on this voyage were in any way out of order and unreliable, if he has any information on that.

Mr. Ryan: He has not seen them, Your Honor. This man was not called in. That is the trouble, or one of the troubles.

(Testimony of G. Edwin Thompson.)

The Court: I think that he said just now that he had two years before made some investigation of the "Denali's" compasses, did he not?

Mr. Ryan: In July, 1933?

The Court: Yes.

Mr. Ryan: Yes.

The Court: Do you know, by reason of that examination, or of anything that happened after that, or before that, which leads you to think or to suspect the "Denali's" compasses were unreliable and out of order and not suitable for use in navigating on this voyage?

The Witness: No. The compasses were very well situated on the boat, and while we didn't test them before she left, we had every reason to believe that they were mechanically in good repair.

Mr. Ryan: There is one more question I want to ask.

The Court: Proceed.

Q. (By Mr. Ryan) You haven't seen the compasses since July, 1933, have you?

A. I would not say that I hadn't seen them, but I have not tested them. [2618]

Q. That is it. Now, isn't it a fact that the Northland Transportation Company has the compasses of its vessels adjusted every spring when the vessels are sent out on their seasonable trips?

A. No.

Mr. Long: What is your answer?

A. No.

(Testimony of G. Edwin Thompson.)

Q. (By Mr. Ryan) Do you do all the adjusting for the Northland Transportation Company?

A. We do.

Q. Have you examined your records to ascertain how often the Northland Transportation Company adjusts the compasses of its vessels?

A. I have not examined them, no, but I know, and I have in mind very accurately about how often we do that on all of these ships.

Q. All right. Can you name any vessel of the Northland Transportation Company that went out this year that did not have her compasses adjusted?

A. This year or this spring?

Q. This spring.

A. Yes.

Q. All right. Name one.

A. The "North Haven".

Q. The "North Haven"?

A. Yes, sir.

Q. Can you name any other one?

A. I don't believe the "North Wind" was on its first trip.

Q. Can you name any other vessels of that company—

A. (Interposing) The "North Wind". [2619]

Q. (Continuing) —that has not had her compasses adjusted within the last ten years at the beginning of the spring season going up to Alaska?

A. Yes.

Q. If she has been laid up?

(Testimony of G. Edwin Thompson.)

A. Yes.

Q. Give me the name if you can, and the date.

A. They do not have that done periodically.

Q. Can you give me the name and the date, please?

The Court: If you think of any others, you might say so, and if you do not, do not hesitate to say so.

A. I do not recall just the dates when that was done.

Q. (By Mr. Ryan) Not having adjusted the "Denali's" compasses since 1933, could you of your own knowledge know their condition as of May, 1935?

A. You mean the amount of deviation that they had, or whether they were in need of repair?

Q. Everything about them. Could you know their condition as of May, 1935, without having looked at them for two years? [2620]

Mr. Ryan: That is all, Your Honor.

Mr. Bogle: Do I understand, Your Honor, that counsel is requesting that this witness be held for further cross-examination on other points?

The Court: That is my understanding.

Mr. Bogle: I would rather that counsel finish his cross-examination, so that I can finish my re-direct examination. I do not see any reason why he shouldn't do it now.

Mr. Ryan: I am only asking for it in reference to this exhibit.

(Testimony of G. Edwin Thompson.)

The Court: Well, you may look at it.

Mr. Ryan: I cannot examine it now. Your Honor can see that I couldn't possibly examine it right now.

Mr. Bogle: He has had a copy for two weeks.

Mr. Long: We gave him a copy of the book two weeks ago.

Mr. Ryan: I beg your pardon—you gave us a copy of the book?

Mr. Long: I certainly gave you a copy with reference to the "Denali" two weeks ago.

Mr. Ryan: Well, I do not want to have any argument. I respectfully ask for a reasonable opportunity to examine the entries in this book. They are of a technical nature, and I will have to give a little time to it.

The Court: (Addressing the witness) Have you got an appointment at 2:00 o'clock this afternoon, a definite appointment?

The Witness: No, sir; I have not.

The Court: Would you be greatly inconvenienced in [2621] your business if you were to come back here at 2:00 o'clock?

The Witness: I can be back.

The Court: Very well. Mr. Ryan, you be prepared to finish this cross-examination at that time. Mr. Bogle, unless there is some serious objection could you continue your redirect at this time?

Mr. Bogle: I can go ahead. Proceed with my redirect.

(Testimony of G. Edwin Thompson.)

The Court: Very well.

Mr. Bogle: If it is limited exclusively to that book, I would be perfectly willing to go ahead.

The Court: It will have to be so limited. You will have to finish the other cross-examination now.

Redirect Examination

By Mr. Bogle:

Q. Mr. Thompson, when you completed your compensation of this compass on July 21, 1933, made up the card, what was the greatest deviation or greatest error shown on any one heading?

A. Two degrees.

Q. What heading was that on?

A. North Northeast.

Q. In making up your compensation card, on how many headings do you give the deviation, how many points?

A. 16.

Q. When you finished with that compass was it an adjusted or unadjusted compass?

Mr. Summers: Just a minute, please; it seems to me [2622] that is immaterial in view of the lapse of time between that time and the sailing of the "Denali" on this voyage?

The Court: The objection is overruled.

The Witness: I would say it was an adjusted, compensated compass.

Q. July 21, 1933?

A. Yes, sir.

(Testimony of G. Edwin Thompson.)

Q. Mr. Thompson, does this matter of retained magnetism depend upon the length of time or the heading the vessel is laid up on?

A. Somewhat.

Q. Assuming that the vessel was laid up on October 31, 1934, and that on March 26, 1935 she was moved from the West Seattle yard, and under her own power proceeded to the General Petroleum plant on Harbor Island, and there took on a full cargo of fuel oil, and returned under her own power to the West Seattle yard; and that on April 4, under her own power, she proceeded to Todd Dry Docks, went into the drydock, heading—do you know the heading of that dock?

A. Yes, sir.

Q. Was she heading in the dock?

A. Yes.

Q. Stayed in the dock for 24 hours, and then backed out of the dock under her own power and returned to the West Seattle yard; in your experience of 20 years, would you assume that she had any retained magnetism?

Mr. Summers: Just a minute, Mr. Thompson, before you answer. This is not redirect, Your Honor.

Mr. Bogle: This whole subject of retained magnetism [2623] was brought out on cross-examination.

The Court: Yes. The objection is overruled.

Mr. Ryan: If the Court please, do you wish any argument on that?

(Testimony of G. Edwin Thompson.)

The Court: No. The ruling will stand. You went into this subject of retained magnetism.

The Witness: I would say it would have a tendency to practically eliminate any retained magnetism.

Q. (By Mr. Bogle) Assuming that after the vessel left the yard on May 13, 1935, she proceeded to the Arden Salt Dock, under her own power, and from the Arden Salt Dock to Pier 40, under her own power, and then from Pier 40 to the American Can Company, under her own power, and from the American Can Company to the Pacific Coast Coal bunkers, and at the Pacific Coast Coal bunkers she reversed approximately twenty times in order to get stern first into the coal bunkers, and that then she went from there, under her own power, to the General Petroleum Company, and from the General Petroleum Company back to Pier 2, under her own power, all of this covering a period from May 13th, some six or seven o'clock in the morning, until noon of May 15th, would you say that at the conclusion of those maneuvers she would or would not have any retained magnetism?

A. I would call that a very good shake-down trip, and that she would have practically none.

Q. Mr. Ryan in his question, as I understood it, spoke of two types of retained magnetism; one acquired from lying on a heading, and one acquired from running on a certain route for a certain length of time. Is there a tendency [2624] of a vessel to

(Testimony of G. Edwin Thompson.)

acquire this magnetism, sometimes called retained and sometimes called temporary magnetism, after she navigates on the same heading for a considerable time?

Mr. Ryan: That is objected to as leading. This is his own witness, an expert witness.

Mr. Bogle: This was all brought out on cross-examination.

Mr. Ryan: That does not give you any right to use leading questions.

The Court: The objection is that the question is leading.

Mr. Bogle: I will put it this way:

Q. (By Mr. Bogle) First, as to the retained magnetism, the possibility of acquiring it alongside the dock; is there any possible way of one determining definitely whether a vessel does or does not acquire that retained magnetism, except by taking bearings?

A. That is the only way.

Q. Under what circumstances may a vessel retain temporary magnetism after she leaves her dock?

A. By running on an East or West course for a period of time.

Q. How long?

A. It would have to be several days.

Q. On the same heading?

A. On the same heading.

Q. How about running on a North course?

(Testimony of G. Edwin Thompson.)

A. Not nearly so effective.

Q. Do you do all the adjusting for the Northland Transporta- [2625] tion Company?

A. I think so.

Q. Do you know whether or not, of your own knowledge, they have any regular period for adjusting compasses?

A. I am sure they do not.

Q. Mr. Thompson, assuming that you had been called in to swing this ship before she left Seattle, before she loaded, and you had found no deviations in excess of the two degrees on any heading, would you have made any compensation of her magnets?

A. Oh, yes; we would.

Q. To what degree would you attempt to get it, the minimum?

A. Reduce it to a minimum?

Q. Of how much?

A. As close as you could work, half a degree.

Q. In 1933 were you able to do that with this ship?

A. There was one heading where it bulged out to two degrees.

Q. And that was the closest you could get her?

A. It is a heading you have no corrector for.

Q. Assuming that you had adjusted the ship, swung her, and, if necessary, made some compensation, if there had been any retained magnetism at the time you made the adjustment what would happen thereafter?

(Testimony of G. Edwin Thompson.)

Mr. Ryan: That is objected to on the ground that it calls for speculation.

Mr. Bogle: I think that all of this does. All of this cross-examination was in regard to speculation as to what might happen.

The Court: Yes. The objection is overruled.

The Witness: As it would lose that retained [2626] magnetism, then the compass would have a tendency to assume an error.

The Court: To do what?

The Witness: To assume an error.

Mr. Bogle: As she lost her temporary magnetism?

Mr. Ryan: Just a minute; do not lead the witness. I would like to have the last answer read.

The Witness: If the compass was made correct on a heading, and then if it lost the magnetism, then it would gradually obtain an error.

The Court: Did you say "obtain" or "attain"?

The Witness: Take on an error.

The Court: You mean a constant error?

The Witness: Increasing with the decrease of the retained magnetism.

Q. (By Mr. Bogle) You made reference to when she lost that magnetism; what magnetism do you refer to?

A. The retained magnetism, the magnetism it took on while laid on one heading.

Q. Then under such circumstances would your adjustment and check of the compass, and the devia-

(Testimony of G. Edwin Thompson.)

tion card that you made up, be correct—would it be a correct deviation card after she lost this temporary magnetism?

A. No. The card is just at that time.

Q. So it would be erroneous, wouldn't it?

A. Yes, sir.

Q. In shaking a vessel down, to shake out any possible retained magnetism, or temporary magnetism, to what extent would you shake her down? What do you mean by that? [2627]

A. Put her on an opposite heading to what she was laid up, and then by backing the ship there is lots of vibration that rattles the ship and shakes it down. If the boat is lying still on a heading it is not so apt to take deviation as it is if it is being jarred. So that if you put the ship around in an opposite heading and then shake it up good it has a tendency to lose any magnetism that it retained much quicker.

Q. Well, Mr. Thompson, would the shaking down that you referred to before a compass adjuster would compensate these compasses be as extensive or more extensive than the maneuvers this ship actually made, which I have referred to in my previous question?

A. I would say they would be less.

Mr. Ryan: That is objected to on the ground that the question is too indefinite, and not based on facts stated in the record, or established in the record.

(Testimony of G. Edwin Thompson.)

The Court: The objection is overruled.

Mr. Long: What was your answer?

The Witness: I would say they would be less.

Q. (By Mr. Bogle) Mr. Thompson, some reference was made on cross-examination to shake-down cruises to Alaska. Do you know of any such practice?

A. I never heard of one.

Q. Did you ever hear of a practice in the Alaska Steamship Company of shake-down cruises to Alaska?

A. No, sir.

Q. In connection with compasses?

A. No.

Mr. Bogle: I think that is all. [2628]

Recross Examination

By Mr. Ryan:

Q. You do not mean to say that you would undertake to draw up deviation cards for a ship that had retained magnetism in it, do you, if the deviation cards would not be any good after you drew them up?

A. Yes.

Q. You would do that, anyway?

A. We would do it and caution them about it. Caution the captain that it was the best we could do under the circumstances.

Q. You would not refuse to do the work, you would not refuse to draw up the deviation cards,

(Testimony of G. Edwin Thompson.)

simply because you knew the ship had so much retained magnetism that your deviation card would not be of any real good after, say, a couple of weeks, is that so?

A. We wouldn't adjust the compass on a boat if we thought the retained magnetism was very large. If it was a small matter then we would give it as much of a shakedown as we could and compensate the compass, and caution them to watch for it.

Mr. Ryan: That is all, excepting this other matter.

The Court: Yes. You can be excused until 2:00 o'clock, and come back at that time, will you?

Mr. Ryan: I may say that I may not need him at that time.

The Court: If you receive word from Mr. Ryan that he doesn't want you to come back, you may accept that as authority from the Court to stay away.

(Witness excused.) [2629]

SYLVESTER GLASS,

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name?

A. Sylvester Glass.

Q. Where do you live?

(Testimony of Sylvester Glass.)

A. Seattle, Washington.

Q. What is your business?

A. Master mariner.

Q. How long have you been a seafaring man, Captain?

A. I first went to sea in November, 1899.

Q. What licenses do you hold?

A. Master, unlimited, all oceans, and pilot from San Diego to Kodiak Island.

Q. How long have you held a master's license?

A. Since 1908.

Q. How long have you held a pilot's license?

A. An Alaska pilot's license, I got that about 16 years ago, but a pilot's license since 1908.

Q. Captain, what experience have you had in Alaska waters?

A. I first started running to Alaska in 1910.

Q. How regularly have you sailed to Alaska since then?

A. From the beginning I was running up there continuously up until about 1932. Of course I want to explain this, that in the winter time, during the off season, for the company that I worked for I was on the Southern run, and every summer I would go back on the Alaska run, every year. [2630]

Q. What companies have you worked for in the Alaska trade, Captain?

A. The Pacific Steam, Northland Transportation, and I have also done considerable piloting for

(Testimony of Sylvester Glass.)

the Standard Oil Company and other independent companies.

Q. Have you done any piloting for the Navy?

A. Yes, sir.

Q. In Alaska waters?

A. Yes, sir.

Q. What has been the extent of your experience in the waters around Dixon's Entrance, Hecate Strait, and Caamano Passage?

A. Well, for two seasons I was continuously on the West Coast run, that is, running the West Coast of Prince of Wales Island, and I used to use Caamano Passage continuously during that time.

Q. About how many trips would you make through there is a *station*, through Caamano Passage?

A. About 34.

Q. Each season?

A. Yes, sir.

Q. Capt. Glass, have you, as the result of your experience in navigating these waters, any personal knowledge as to the regularity of tidal currents, the force and direction, the time of the commencement of the slack, and the time of the commencement of the flood, particularly in the area from Triple Island up to the entrance of Caamano Passage?

A. You mean absolute knowledge?

Q. No. What has been your personal knowledge after making [2631] 34 trips a year through there?

(Testimony of Sylvester Glass.)

Mr. Summers: Just a minute. If Your Honor please, I object to this for two reasons. First, the answers to the interrogatories to the Petitioner said that on the voyage in question the tidal currents were known and to be expected. In other words, that they were, in effect, usual, and if this witness is testifying only as to known or usual or expected conditions it is immaterial. If he is undertaking to contradict the interrogatories, then the Petitioner is bound by those answer. If so, that would be an attempt to depart from the allegations of the petition here to the effect that the cause of this stranding is unknown to the Petitioner, and if it was unknown in September when the Petitioner filed its petition, after investigation——

The Court: The objection is overruled. He may answer.

Mr. Ryan: May I ask Your Honor at this time to require Petitioner's counsel to state their position on the record, with reference to whether the cause of this disaster is unknown to them, or whether it is known to them, and if they are now trying to disclose their knowledge, or what their position is. On the pleadings as they stand the petitioner, in the petition sworn to by the officers of the Petitioner, alleges that the cause of the stranding is unknown, and that she stranded on this reef, and that she got off her course, or got off the course. In the answers to the interrogatories, as Mr. Summers just pointed out, they stated that the conditions she encountered, weather and sea, were such as were

(Testimony of Sylvester Glass.)

[2632] reasonably to be expected at that time of the year, at the season, in that place. They answered yes in answer to that.

So, as I see it, the Petitioner is now precluded by its own pleadings from coming in here and trying to rely on some known cause that they know about, which they have concealed all this time in their pleadings, and throughout the case.

If they are trying to show that the ship encountered a peril of the sea in the shape of a reasonably unforeseeable sea condition, they were required to state that at the proper time and in this case.

The pleadings have been gone through before Your Honor and before Judge Neterer, time and again.

Now, if they are going outside that now, and are trying to inject peril of the sea as a defense in their limitation suit, I respectfully urge to Your Honor that they are precluded from doing that by their own pleadings.

They swear that they do not know the cause, and that pleading was dated three months after the investigation of the Steamboat Inspectors, after the facts were known, and after Mr. Murphy admits he got reports about this thing from the pilot.

Now, this is a very serious point, as I see it. Counsel is asking this man, apparently, about his experience there, about currents, and that sort of thing, and that is outside the issues in the case, as I see it. They have not pleaded peril of the sea in their petition.

(Testimony of Sylvester Glass.)

The Court: The objection is overruled. Exception [2633] allowed.

Mr. Ryan: May I have a continuing objection on that ground, and on the grounds stated by Mr. Summers, and an exception to the adverse ruling of the Court on this whole line of examination of this witness, and other witnesses on that point.

The Court: I would say that you had better repeat your objection, at least in connection with separate witnesses.

Mr. Ryan: Very well, but as to this witness.

The Court: As to this witness you may, as far as the Court is concerned. Read the last question.

“Q. Capt. Glass, have you, as the result of your experience in navigating these waters, any personal knowledge as to the regularity of tidal currents, the force and direction, the time of the commencement of the slack, and the time of the commencement of the flood, particularly in the area of Triple Island up to the entrance of Caamano Passage?

A. You mean absolute knowledge?

Q. No. What has been your personal knowledge after making 34 trips a year through there?”)

The Witness: I could not very well answer about the time, but I could answer definitely that the set of the current always sets from a point about off Prince Lebo Island, up through Caamano Passage,

(Testimony of Sylvester Glass.)

invariably, every trip that I have made there, set on Zayas Island, towards the westward.

Q. Captain, I show you Petitioner's Exhibit No. 33, chart [2634] No. 2828. I wish you would take a blue pencil and indicate on that chart the knowledge gained from your own personal observations as to the set of the tide; first, in the position just southerly of Zayas Island, on an ebb tide.

Mr. Ryan: May I object further on this ground, that the witness has not yet testified that he has made any observations or accurate determinations, and has not specified any one which would tend to show that the United States Government, the British Admiralty, and the Canadian Government were wrong in issuing the instructions which they have issued on that chart No. 2828, and on British Admiralty Chart No. 1737, with reference to tidal currents, at every hour of the day throughout the 24 hours, and with reference to the tidal current arrows thereon.

Mr. Bogle: I might state, Your Honor, because counsel has repeated that argument——

Mr. Ryan: (Continuing) And this is an attempt, apparently, to impeach the United States Government charts, and the Canadian Government and British Admiralty charts, and the man has not been shown sufficiently qualified by experience or observation, or experiment, such as to give any weight whatever to his testimony tending to contradict the years of experience, and observations, with accurate scientific instruments, which are condensed

(Testimony of Sylvester Glass.)

and described on the United States Government charts, and particularly Chart No. 2828.

Mr. Bogle: If Your Honor please, that statement has been made about twenty times— [2635]

Mr. Ryan: (Interposing) I ask that it be added to my grounds of objection to the whole line of examination of this witness.

Mr. Bogle: I merely want to point out in argument on that matter that there isn't a syllable of testimony in this case as to what this chart is based on. There isn't one particle of evidence that there has been any survey made, not a particle of evidence that the United States Government has any knowledge whatsoever about it, and we expect to show that it is merely a copy of a Canadian chart. There has been no U. S. surveys in this vicinity at all.

Mr. Summers: To the extent that the objection has been made, I want to supplement it; it is not shown that on any voyage Capt. Glass has made in these waters that the conditions were similar to those on the voyage in question, and there is no comparable basis for an opinion.

The Court: The objection is overruled. Read the question. (Question read as follows:

“Q. Captain, I show you Petitioner's Exhibit No. 33, chart No. 2828. I wish you would take a blue pencil and indicate on that chart the knowledge gained from your own personal observations as to the set of the tide; first, in the position just southerly of Zayas Island, on an ebb tide.”)

(Testimony of Sylvester Glass.)

If you know that, Captain. There is always one condition in these questions, and that is if you know.

The Witness: I know it by actual observation, the set of my ship. (Witness makes certain designation [2636] on exhibit.)

Q. (By Mr. Bogle) The arrows in blue, made with the blue pencil, on Petitioner's Exhibit No. 33, have been drawn by you in answer to that question?

A. Yes, sir.

The Court: At this time we will take the noon recess until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock P. M., November 12, 1937. [2637])

November 12, 1937,
2:00 o'clock P.M.

Court convened pursuant to adjournment;
All parties present.

The Court: Mr. Thompson was asked to come back in case there might be any further cross-examination. Is it agreeable to take up that matter with him now, Mr. Ryan?

Mr. Ryan: Yes, Your Honor.

The Court: Come back to the stand, Mr. Thompson. Mr. Thompson is recalled for the purpose of further cross-examination as previously indicated.

G. EDWIN THOMPSON,

resumed the stand for further examination.

Further Cross-Examination

By Mr. Ryan:

Q. I show you this book—your memorandum book, Petitioner's Exhibit 64, and I will ask you to state what difference you found between the deviations on the standard compass and the steering compass of the "Denali" on July 21, 1933, when you adjusted her compasses on the heading West Southwest.

A. They were the same.

Q. That is, the deviation was zero, was it not?

A. Zero on both of them.

Q. On West Southwest?

A. That is right.

Q. That is what you found after you had completed your [2638] adjustments, isn't that so?

A. Yes, sir.

Q. I mean as you corrected it that was what was left—nothing—on West Southwest—no difference between the standard compass and the steering compass on that heading of West Southwest?

A. We would correct them first, and then we would swing her for residual deviation.

Q. Now, when you made your adjustment in July, 1933, on the compasses of the "Denali", what difference did you find between the standard and steering compasses on the heading West?

(Testimony of G. Edwin Thompson.)

A. There was half a degree difference between then.

Q. In what direction?

A. The standard compass had a half degree easterly deviation when the steering compass was magnetic.

Q. Now, when you adjusted the compasses of the "Denali" on July, 1933, what differences did you find between the deviation on the standard and steering compasses on the heading West Northwest?

A. They were both zero.

Q. When you adjusted the compasses of the "Denali" in July, 1933, what differences did you find between the deviations on the standard and steering compasses on the heading Northwest?

A. The standard was half a degree westerly and the steering was half a degree easterly. There would be one degree difference.

Q. In what direction would that difference be?

A. It would be added. The difference would be one degree. [2639]

Q. One degree westerly or easterly?

A. Neither. One is one-half degree one way and the other is one-half degree the other way.

Q. Well, which is to the right of the other?

A. The——

Q. (Interposing) You don't know whether that is one degree westerly, or one degree easterly—the difference between the two, is that it?

(Testimony of G. Edwin Thompson.)

A. I don't know how you could—I say each of them is half a degree. One is one way—one is half a degree one way from zero and the other is half a degree the other way from zero.

Q. There is one degree difference between the two of them?

A. That is right.

Q. Now, what deviation did you find between the standard and steering compasses on the “Denali” in July, 1933, on the heading North Northwest?

A. The standard was one degree westerly and the steering was one degree easterly.

Q. Yes. Now, I show you the deck log book of the “Denali” on this voyage, Claimants' Exhibit A-4, and I call your attention to the entry, May 16, 1935, and ask you to tell me what differences, if any, that log book shows between the deviations on the standard and steering compasses—

Mr. Bogle: What was the time?

(Question read)

Q. (By Mr. Ryan) Take the standard compass reading as entered there as West $\frac{3}{8}$ South.

A. I do not see it.

Q. I mean this compass reading (indicating). That should [2640] be West $\frac{3}{8}$ North.

A. There was one-eighth of a point difference—no—three-eighths of a point difference.

Q. Three-eighths of a point difference, isn't there?

(Testimony of G. Edwin Thompson.)

A. Yes, sir.

Q. In what direction?

A. I don't know that you could say. You cannot say in which direction there. They are that much apart. Unless you know which one was right you could not say which direction either one was off.

Q. You cannot say whether both had changed or whether just one had changed, can you?

A. No, you cannot tell.

Q. But the difference between the two was three-eighths of a point?

A. Yes, sir.

Q. All right. Now, on the same date, note the entry there of the standard compass—that is, the bridge compass Northwest by West, and tell me what difference was recorded there as of May 16, 1935, between the deviations on the standard and steering compasses on the "Denali".

A. One-quarter of a point.

Q. In which direction?

A. I cannot tell that either.

Q. How many degrees is that?

A. A quarter of a point?

Q. Yes.

A. Approximately two and a half degrees.

Q. All right. Now, on that same date, May 16, 1935, what differences are recorded in that deck log book of the [2641] "Denali" on the standard compass heading Northwest by West $\frac{3}{4}$ West?

A. There is a quarter of a point difference there.

(Testimony of G. Edwin Thompson.)

Q. Can you tell me what direction it is in?

A. No.

Q. What kind of a deviation that is, can you tell me that?

A. No, of course.

Q. All right. On that same date, May 16, 1935, what differences do you find recorded in that log book between the deviations on the standard and steering compasses, taking, for instance, the entry recording bridge compass or standard compass heading West $\frac{7}{8}$ South?

Mr. Bogle: Just a minute. I want to object to this as not being within the Court's order that he examine this witness further with reference to—

The Court: (Interposing) It may not be, Mr. Bogle, but I want to say that the Court is very much interested in the specific condition of this or these specific compasses.

Mr. Bogle: Yes.

The Court: Before or at the time of the stranding—within any reasonable time before the stranding, and so I will let him answer.

A. I don't find that course.

Q. You find it now, don't you (indicating)?

A. Yes.

Q. Now what do you say?

A. There is one-eighth of a point difference.

Q. In what direction?

A. I cannot tell. [2642]

(Testimony of G. Edwin Thompson.)

Q. On that same date, May 16, 1935, what differences do you find recorded there between the deviations on the standard and steering compasses of the "Denali" on, say, standard compass course West $\frac{5}{8}$ North?

A. A quarter of a point difference there.

Q. Can you tell in what direction?

A. No.

Q. Now, on May 17, 1935, in the deck log book of the "Denali" what differences do you find recorded there between the deviations on the standard and the steering compass on a heading by standard compass of West by North $\frac{5}{8}$ North?

A. Three-eighths of a point.

Q. In what direction?

A. I cannot tell you.

Q. Now, have you made an entry of those differences that you have just found in the note book?

A. No, I did not.

Q. Will you make a note of them now as the reporter just reads back your answer.

(The deviations on the various headings between the standard and steering compasses as of May 16 and May 17, 1935, were read to the witness.)

Q. (By Mr. Ryan) There is one more. Now, on May 16, 1935, what differences did you find recorded in the deck log book of the "Denali" between the deviations on the standard compass and the steering compass on the heading, by standard compass, West $\frac{3}{8}$ South?

(Testimony of G. Edwin Thompson.)

A. On the 16th?

Q. Yes. [2643]

A. A quarter of a point.

Q. In what direction?

A. I cannot tell you.

Q. Now, have you made a list of those on a piece of paper?

A. I am making it now. I have, yes, sir.

Q. You have before you your book——

A. Yes.

Q. (Continuing) ——that you made contemporaneously regarding the condition of the “Denali’s” compasses on July 21, 1933, Petitioner’s Exhibit 64, haven’t you?

A. Yes, sir.

Q. Now, will you state whether or not the condition of the compasses as recorded in the deck log book of the “Denali” on this voyage in May, 1935, is the same as, or definitely different from the differences between the deviations on the standard and steering compasses of the “Denali” as you found them after you had completed your adjustment in July, 1933?

A. Of course, there is no course——

Q. (Interposing) Will you please answer the question?

Mr. Long: He is trying to.

Mr. Ryan: Yes.

A. Of course there is no course here the same as in the book that we took the deviations on.

(Testimony of G. Edwin Thompson.)

Mr. Bogle: You say that there is no course——

Q. (By Mr. Ryan) Do you mean that——

Mr. Bogle: (Interposing) I would like to get that. You say there are no courses here?

The Witness: Yes.

Mr. Bogle: What are you referring to? [2644]

The Witness: These courses that counsel has referred to out of the log book are all different courses from those that we took deviations on at the time that we adjusted the compasses.

Q. (By Mr. Ryan) Do you mean to say that by using the deviation cards that you prepared the officers on the ship would not be able to know what the deviations were on the courses that were recorded in that log book?

A. I didn't say that.

Q. If they had used the ship immediately after you had completed adjusting the compasses?

A. I didn't say that.

Q. Then what do you mean?

A. You wanted to know—in mentioning these courses—if there was any extreme difference between the deviations that are in the log book and what were on the card a year and a half before.

Q. Yes. Now, look at your courses and answer that question.

A. There is a little difference than what they would be between these deviations, but nothing serious.

Q. State what differences there are.

(Testimony of G. Edwin Thompson.)

A. They might vary two degrees difference.

Q. State what they are.

A. I cannot state what they are.

Q. You have both books before you and you cannot——

A. (Interposing) I cannot state what they are because these headings here are a little different than what they are in the book here (indicating).

Q. Of course they are. State what the differences are.

A. I would have to do considerable mathematical calculation [2645] to find out exactly what they are.

Q. What? To just subtract one from the other requires a lot of calculation?

A. Well, you want to know exactly, Mr. Ryan.

Q. I know, but I have only asked you about six or seven headings.

A. Sure. If you want to know what the exact deviation was on any headings in between here, it would take a mathematical calculation to figure it out exact.

Q. Yes. Go ahead and do it.

The Court: Is there any way that you could approximate it within certain limits so that——

A. (Interposing) It is so unimportant.

The Court: (Continuing) So that you could make your answer fairly certain?

The Witness: The extreme difference here would be about four degrees. [2646]

Q. (By Mr. Ryan) What would that indicate to you in reference to a change in the condition

(Testimony of G. Edwin Thompson.)

of the compasses, between the time you adjusted them in 1933 and the time when their differences are recorded in May, 1935?

A. There would be some change.

Q. You testified that the compasses could be adjusted down to half a degree, or a degree; now, here we have four degrees difference, a 400 per cent greater error than existed when you examined them. What significance has that for you as a compass adjuster?

A. I said that you could adjust on certain headings down to within half a degree, and those are on the cardinal points and the quadrantal points.

Q. What do you say about that four degrees change in the deviation of the compasses, that is, the difference between the standard and steering compasses, on that heading? In July, 1933 it was zero.

A. Yes.

Q. And in May, 1935, the difference in the deviations between the standard and steering compasses was four degrees, that is right, isn't it?

A. Approximately, yes.

Q. What does that indicate to you as a compass adjuster with reference to the change in the condition of those compasses, and the magnetism change?

A. Nothing serious, to my mind.

Q. A four degree difference doesn't indicate anything to you, as a compass adjuster?

A. Not when you know what it is, no.

(Testimony of G. Edwin Thompson.)

Q. Suppose you don't know what it is? [2647]

A. Well, that is what the officers of the ship have to find out and keep track of.

Q. It is your job if you are hired to do it, isn't it?

A. I am hired to reduce the errors.

Q. You could have reduced four degrees down to one degree, couldn't you?

A. It could have been reduced. I don't know just exactly how much.

Q. If it could not have been reduced there was something still very seriously wrong with the compasses, wasn't there?

A. No.

Q. If you couldn't get it down below four degrees you think the compasses were all right, notwithstanding your testimony here this morning that you could adjust them down to one degree?

A. It doesn't mean there was anything the matter with the compasses at all. There might have been some iron very close by the compasses that would cause deviations like that, that couldn't be corrected.

Q. Anyway, there was something wrong with the compasses when they showed four degrees deviation, a difference between the deviations on the standard and steering compasses, when you know of your own knowledge those same compasses showed zero degrees difference when you examined them before?

A. Nothing wrong with the compasses.

(Testimony of G. Edwin Thompson.)

Q. Something had happened to make that difference, an increase of 400 per cent?

A. Yes; but nothing happened to the compasses. Something [2648] happened to the ship.

Q. How do you know it didn't happen to the compass?

Mr. Long: Let him finish his answer.

The Witness: It is the character of the ship that changes, not the compasses.

Q. Then it indicates to you that the character of the ship, as to her magnetism or magnetic field, had changed, seriously, between the time you examined those compasses and adjusted them in 1933 and the time this ship sailed in 1935, isn't that so?

A. Not seriously.

Q. Well, how much?

A. Four degrees.

Q. Well, that is all you know on that heading, isn't it; four degrees on that heading?

A. That is the extreme. The rest of them have been all less than that.

Q. On these other unknown headings it might have been much more than that?

A. You picked out the extreme here on all those courses.

Q. On the headings on which the deviation was unknown, if there was four degrees on that, that would indicate you ought to adjust it and reduce the error on all the headings, doesn't it? I mean as a matter of good practice, if you found that

(Testimony of G. Edwin Thompson.)

condition you would adjust the compasses, wouldn't you?

A. I didn't get the question.

Q. As a matter of good and safe practice, if you had found this condition that existed, according to this log book of the "Denali", in May, 1935, you would have ad- [2649] justed the compasses, wouldn't you?

A. Are you speaking to me as if I had been the captain of the ship?

Q. If you had been called in to adjust those compasses, and you found four degrees difference there, when you had previously examined those very same compasses before and found no difference on that heading, and you didn't know what the deviation was on certain other headings, you would have adjusted the correctors, wouldn't you, to reduce that down, as a matter of good practice?

A. If I had been called in as a compass adjuster, yes.

Q. Of course you would. And it would require the services of a compass adjuster to do that, wouldn't it, under the practice here in Seattle?

A. Yes.

Q. And you were not called in. Now, you understand that when I have been asking you about the deviations you found in 1933 that I have in every instance been referring to the deviations you found after you had completed your adjustment, and as you recorded them in your memorandum book there.

A. Yes; I understand that.

(Testimony of G. Edwin Thompson.)

Q. What could cause a four degree change in the difference between the deviations on a standard compass and the steering compass?

The Court: I think he has already said that it would be the nature of the cargo or the condition of the ship. Is there anything else that you think of, Mr. Thompson?

The Court: There is quite a few things, and principally the structure of the ship. [2650]

Q. Change in the magnetism of the ship, due to some cause?

A. Yes.

Q. And something might happen to the compass itself, might it not, something happen to the pivot, or it gets sluggish, or a bubble, or things of that sort—they could cause a change like that, couldn't they?

A. No; I wouldn't say that.

Q. If one of the compasses had something happen to its pivot—

A. (Interposing) Yes.

Q. (Continuing) Wouldn't that tend to throw it out four degrees; couldn't that do it, as compared with the steering compass?

A. Yes; if it stuck it would have a different reading from the other compass.

Q. And if a bubble got in there that would cause that compass that had the bubble in it to differ, wouldn't it?

A. A large bubble, yes.

(Testimony of G. Edwin Thompson.)

Q. And if the lubber's line had gotten out of position for some reason on one compass, that would tend to throw that compass off somewhat with reference to the other compass, wouldn't it?

A. The lubber's line couldn't shift.

Q. Well, the compass itself could shift for some reason, couldn't it?

A. No.

Q. I mean the reading of the compass could—the compass card could move?

A. No.

Q. It couldn't shift? [2651]

A. It couldn't shift.

Q. It could stick?

A. Yes.

Q. So if the lubber's line moved it wouldn't move that much, it would move sluggishly, wouldn't it, or not at all?

A. Oh, yes.

Q. There are a lot of things that could happen that could cause that change, the difference between the deviations on the standard and steering compasses from one time to another, isn't that so?

A. On the magnetic compass things do not happen quickly like that; it takes a long, long time. It is very gradual. They couldn't have a magnetic good course this morning and this afternoon have the compass off $\frac{3}{8}$ of a point, or something like that. It would be very, very gradual.

Q. Yes, but say—this is just for illustration—suppose the compass should be lying so long, and the

(Testimony of G. Edwin Thompson.)

ship lying so long on that one head that it got magnetised on that heading—

Mr. Long: I object to that as not cross examination.

The Court: The objection is overruled. This is the kind of inquiries the Court has been trying to get from both counsel since the start of the trial, and this is information that I have been seeking all the time. Proceed. I wish we had got at this the first day of the trial, because then we would have shortened it a great deal. Read the question. (Question read as follows:

“Q. Yes, but say—this is just for illustration—suppose the compass should be lying so long, and [2652] the ship lying so long on that one head that it got magnetized on that heading—”).

Q. (By Mr. Ryan—continuing) Then when that ship went out and made a swing to the North of a large number of degrees, that condition might reasonably cause a difference between the standard and steering compasses, might it not?

A. Yes.

Q. A change in the magnetic field surrounding the compass would cause such a change in the difference between the deviations on the standard and steering compasses as you have described, wouldn't it?

A. Yes.

(Testimony of G. Edwin Thompson.)

Q. And such a change in the magnetic field could reasonably result from the ship lying on one heading for a long period, couldn't it?

A. I would say not that much difference.

Q. Well, you don't know how much difference, do you, unless you adjust it.

A. There is $\frac{3}{8}$ of a point difference there.

Q. You do not know what caused that difference, do you?

A. No. Ordinarily——

Q. (Interposing) But do you know what caused that difference?

Mr. Long: Let the witness answer the question.

The Court: The objection is overruled.

Mr. Long: Exception.

The Court: Allowed. (Last question read.)

A. I would answer that, that lying——

Q. (By Mr. Ryan—Interposing) Do you understand the question? Read it to him. [2653]

A. I am working around to it.

Q. But answer the question first, and then if you want to explain it, go ahead.

A. Well, you will have to read the question again, then. (Question re-read.) No.

Q. Now, if all you knew was that there was a four degree difference that had crept in there between the deviations on the standard compass, as compared with the deviations on the steering compass, and you didn't know what caused it, and you knew you had examined those same compasses some

(Testimony of G. Edwin Thompson.)

time before and there was no difference between them on that heading, then those compasses would require an examination by you, and adjustment by you, to correct that four degree deviation on that heading, and to correct any unknown deviations on other headings which might be as large or much larger, isn't that so?

A. No, no.

Q. What?

A. No. If there is a difference between the two compasses that way it might be caused by some local attraction, something temporarily close by the compass, and you certainly wouldn't adjust the compass without finding out what it was, and if it was something temporary you would remove it if you could, and if you couldn't, like part of the cargo, all you do is keep note of it, allow these errors, and wait until that cargo is taken off and then check the compasses again.

Q. Suppose that difference does not result from the cargo that you put on, that is, from this local attraction you talk about, then those compasses require adjustment to [2654] reduce them down, do they not?

A. I am afraid we do not understand each other.

Q. Do you understand the question? Read it.

(Last question read.)

A. A compass adjuster——

Q. (Interposing) Answer that first, and if you want to explain it, go on.

(Testimony of G. Edwin Thompson.)

The Court: If you know.

The Witness: I guess you will have to read it again. (Question re-read.) They would have to be adjusted if you want to reduce it down, yes.

Q. And that is always the good and safe practice, to reduce the deviations down to the low limits, like you compass adjusters do here, isn't it? Isn't that always good and safe practice?

A. Well——

Q. (Interposing) Answer that yes or no, and then go on and explain, if you want to.

A. Well, I would say it probably is, yes.

Q. Yes——

A. (Continuing) But you couldn't have a compass adjuster following around on all changes like those that are usually caused by local attraction.

Q. But you just testified you didn't know what caused this change?

A. Well, I do not.

Q. If it did not result from some local attraction on the ship, and you were called in, you would change the correctors and the magnets, and the Flinders bars, and the quadrantal balls, and that sort of thing, to adjust [2655] that compass so it would be safe, would you not, and reduce the deviation to low limits.

A. Yes; if we were called in.

Q. Now, you do not know of your own knowledge any local attraction existing on board the "Denali" that would account for this difference, do you?—of your own knowledge.

(Testimony of G. Edwin Thompson.)

A. All ships are full of local attraction.

Q. But you do not know any that existed on the "Denali" on this voyage?

A. I do not know of any particular spot that changed from the time we adjusted them until these deviations were taken, the cause.

Q. Yes; that is what I thought. So that so far as you know, this is just a plain case of a situation where the compasses required adjustment, because you do not know of any little local attraction that had changed on the "Denali" during that period?

Mr. Bogle: I shall object to that, if Your Honor please.

Q. (Continuing) Isn't that it?

Mr. Bogle: The witness has said he wasn't there, and he doesn't know.

The Court: The objection is overruled, unless it is repetitious.

The Witness: I answered that before, that same question.

The Court: That same question?

The Witness: Yes, Your Honor.

The Court: All right; the witness says that he has [2656] answered before.

Mr. Ryan: All right. I will try not to repeat.

Q. (By Mr. Ryan) Now, on this memorandum book that is here I notice that there is a page pasted in here, right alongside the "Denali" entry—

A. (Interposing) With no reference to the "Denali".

(Testimony of G. Edwin Thompson.)

Q. There is no reference to any other ship, is there?

A. Yes.

Q. On that page?

A. No.

Q. Look at it.

A. It is attached to this other succeeding page.

Q. There is no reference to any other ship on that page, is there, any other ship than the "Denali"?

A. There is no reference to any ship on this attached page. It is attached to the other page, and not attached to the "Denali" page.

Q. It is pasted in as the page right following the "Denali", isn't it?

A. No; it is pasted on the next page. It is a rider on that next job.

Q. Well, the page that the "Denali" is on is full; you couldn't put it on that page, could you?

A. That is the reason that rider was put in there, because this other page was full, and the rider was put on top of it.

Q. Now, this other page that you talked about, that is pasted in here, that does not refer to any other kind of compass than that that was on the "Denali", does it?

A. I will have to look it over and see. [2657]

The Court: Why don't you ask him directly whether or not that page has anything to do with the "Denali", or any circumstance akin to that circumstance of the "Denali"?

(Testimony of G. Edwin Thompson.)

Mr. Ryan: Yes, Your Honor.

The Witness: It has not.

Q. (By Mr. Ryan) Do you know of your own knowledge that it has not, that page?

A. I do.

Q. How do you happen to remember that?

A. I remember all the details of this job.

Q. Well, I do not want to impeach you on that. When did you first discover that you had had anything to do with adjusting the compasses on the "Denali", since, say, May, 1935?

A. I remember about it at the time of the accident. I remembered that we had adjusted it last.

Q. You are sure you remembered in the fall of 1935 that you were the one who had adjusted the compasses on the "Denali"?

A. Yes.

Q. In 1933?

A. Yes.

Q. You remembered it at that time?

A. Yes.

Q. You didn't figure out or compute the coefficients when you adjusted the compasses of the "Denali" in 1933, did you?

A. Yes, I did.

Q. Where are they? [2658]

A. I didn't attach them there.

Q. There are coefficients on this page that is pasted in here, are there not?

A. Yes.

(Testimony of G. Edwin Thompson.)

Q. You mean to say you had some other record book besides this?

A. Let me tell you that this other compass job here, the reason of that information and everything, as I say, was because it was an exceedingly bad job, and that is why all those notes. Any of these that are just routine jobs, and we haven't any notes, that is because everything around the boat was all very satisfactory.

Q. There are plenty in this book that have the coefficients all computed out?

A. There may be some.

Q. There are a lot of them, aren't there?

A. I don't know. I haven't looked through it to see.

Q. You say you did figure it out for the "Denali"?

A. Yes.

Q. And you recorded it somewhere?

The Court: That is not what he said, Mr. Ryan. He said that where it was a more or less routine job he didn't go to the trouble of putting down all those notations, but that in the instance you have called his attention to it was an involved job, and that he did put down that rider.

Mr. Ryan: If Your Honor please, I think you overlooked the answer that he gave just before that. He said he did figure them out for the "Denali".

Q. (By Mr. Ryan) You did figure out the coefficients for the [2659] "Denali", didn't you?

(Testimony of G. Edwin Thompson.)

A. Just the other day I did.

Q. Did you figure them out at the time you made the adjustment, in 1933?

A. At the time I did the job I did it, to see whether the deviations are reduced to a minimum or not.

Q. You have to do that in writing?

A. No; you can do it in your head.

Q. Did you do it in writing when you did it in connection with the "Denali", in 1933?

A. I probably did it in my head.

Q. You do not know which way you did it?

A. I probably didn't write it, no. It is too simple.

Q. At any rate, it is not in this book?

A. It is too simple; you do not have to figure it on paper.

Q. Now, these differences that you have pointed out between the deck log entries in May, 1935, with reference to the deviations of the "Denali" on her standard and steering compasses, as compared with the deviations you found in 1933 on those same compasses, those indicate a change in the form of the deviation curve, do they not?

A. They do.

Q. When the form of the deviation curve has been changed, that means the compasses must be adjusted, under ordinary and safe practice, does it not?

A. It does not.

(Testimony of G. Edwin Thompson.)

Q. It does not?

A. No.

Q. Why not?

A. Because they couldn't adjust the compasses on a boat [2660] every time they load or unload some cargo on the deck. You couldn't have a compass adjuster following around from one port to another.

Q. Wait a minute; assume the cargo on deck had nothing to do with the compasses, the readings on the compasses, isn't it true that that change that occurred in 1935 in the deviations on the standard and steering compasses of the "Denali", as compared with the deviation as you found it, showed such a change in the form of the deviation curve from those previous readings of the compasses to show that they required adjustment by a compass adjuster?

A. No.

Q. Why not?

A. The deviations are not large.

Q. Why, you don't know what they are—there were four degrees on one heading.

A. Four degrees is the most I found.

Mr. Long: If Your Honor please, I object to this.

The Court: This is argument with the witness, Mr. Ryan, and that will not help the Court in deciding the case. Ask him what he thinks about it, and reasonably try to get his information.

Q. (By Mr. Ryan) Four degrees is too large a deviation to be permitted safely to exist on a compass, which you have proved by experience can be reduced, so far as its natural deviation is concerned, down to much less than that; isn't that so?

A. I will have to answer your question another way; the deviations couldn't be that much unless there was some [2661] local attraction there. If you adjusted the compasses every time there would be some local attraction, then every time it was removed it would be off again.

Q. Either local attraction or retained magnetism, or something else?

A. It might be one of any number of things.

Q. But there is some dangerous condition existing there; that much is known, isn't it?

A. It is not dangerous when you know what the deviation is.

Q. Well, you testified before lunch that this retained magnetism is of a peculiar and changeable character, didn't you?

A. I didn't say it was peculiar. It is changeable.

Q. It is changeable?

A. It is changeable, yes.

Q. Yes; it *is* keeps changing over the course of two or three weeks, or a week, and it might be very different from what it was at the start?

A. It is very temporary.

Q. Certainly.

The Court: Are you going over the same thing again?

(Testimony of G. Edwin Thompson.)

Mr. Ryan: No, Your Honor.

The Court: The Court has been instructed a great deal by the testimony of this witness on both direct and cross examination at this time, but it seems to me that you are exhausting the subject matter now.

Mr. Ryan: That is all, if Your Honor please.

[2662]

Further Redirect Examination.

By Mr. Bogle:

Q. Mr. Thompson, upon what heading was there a four degree deviation, as shown by the log book?

A. West by North $\frac{5}{8}$ North.

Q. How do you find from the log book entry that there was a four degree variation on that course?

A. The difference between the two compasses.

Q. Why, certainly. This deviation of four degrees that you are talking about, you mean to say there were four degrees between the reading of the standard compass and the steering compass, on that course?

A. That is right.

Q. That is the difference between the two, but counsel has not given you any indication as to what the deviation was on either of those courses?

A. No, sir.

Q. Referring to it as a four per cent deviation, is that correct?

(Testimony of G. Edwin Thompson.)

Mr. Ryan: (Interposing) Just a moment; there is no reference to four per cent; it is four degrees.

Mr. Bogle: I beg your pardon—four per cent deviation is not correct.

Mr. Ryan: There is nothing to indicate that it was four per cent.

Q. (By Mr. Bogle) Can you tell from your 1933 card, or your books, by reference to the log book, what the deviation was on any course in the log book?

A. I haven't the book here. Yes; Northwest is listed here.

Q. What was the deviation on Northwest?

[2663]

A. There was one degree difference between them, and here it shows $\frac{1}{8}$ of a point; approximately a degree and a half.

Q. In other words, the difference between your 1933 adjustment on that heading, the difference between the two compasses, is how much?

A. The difference in the book here is one degree, and the difference in the log book is $\frac{1}{8}$ of a point, approximately a degree and a half—a little less.

Q. A degree and a half?

A. Yes.

Q. Do you find from the courses that you can tell what difference there was in the deviation?

A. That is on these days referred to above, or shall I search clear through the book?

Q. On the days that have been referred to. I do not want you to go through the whole book.

(Testimony of G. Edwin Thompson.)

A. That is the only one of those two days.

Q. And in your 1933 adjustment there was a difference on certain headings of as much as a degree, wasn't there?—or two degrees?

A. Two degrees.

Q. How did you make your compensations, swing the ship? How did you get the deviation on the standard compass and the deviation on the pilot house compass?

A. With an azimuth error on the standard compass, and then by comparison with the steering compass with the standard.

Q. You got your deviation on your pilot house compass, or steering compass, by comparing it, putting it on the [2664] standard on a certain course and then comparing to see what course the steering compass was on, didn't you?

A. Yes.

Mr. Ryan: May I object to this as not proper redirect examination.

Mr. Bogle: This was all brought out on cross examination, Your Honor.

The Court: Yes; the objection is overruled.

The Witness: You put the ship on a heading approximately within a degree or so of the course you want to check, and then ascertain the deviation of the standard compass, and that is compared with the steering compass, with the corrected reading of the standard compass. [2665]

Q. You say that you have had no seafaring experience?

(Testimony of G. Edwin Thompson.)

A. I have not.

Q. You would not know whether a difference of four degrees, as the maximum between the standard compass and the steering compass, was normal or excessive?

Mr. Ryan: Just a minute. I object to that.

The Court: You mean from the standpoint of a navigator?

Mr. Bogle: Yes; that is right.

The Court: You mean from the standpoint of a navigator?

Mr. Bogle: Yes.

The Court: If he knows that, he may answer.

Mr. Bogle: Yes, if he knows that.

The Court: Yes.

Q. If you know that, you can say so.

A. I would say that it was very common.

Q. Assume at the time that these courses were steered as have been referred to by Mr. Ryan, that the vessel had on her well deck a considerable cargo—deck cargo consisting of trucks, boilers, rock crushers and other cargo with magnetic tendencies, would you expect that to have any effect upon your compasses?

A. It might have.

Q. Would that account for this difference between the two compasses that you have spoken of?

A. That is very possible.

Q. Is that the ordinary cause for those differences?

A. Yes, sir.

(Testimony of G. Edwin Thompson.)

Mr. Ryan: I object to that question. This man [2666] cannot answer that. This man is not a mariner. He does not know——

The Court: (Interposing) Are you objecting to it on the ground that it is leading?

Mr. Ryan: Yes, on the ground that it is leading.

The Court: Yes, it is.

Mr. Bogle: Of course, I am going into a subject that was not touched on on direct, Your Honor.

The Court: That may be.

Mr. Bogle: It is hard for me to touch on something that was not really gone into on direct, but was brought out on cross without leading.

The Court: That is not the point. I would suggest that you try to avoid leading, if you can. You may proceed. I will overrule the objection made.

Mr. Bogle: I will try not to lead him, Your Honor.

The Court: Proceed.

Q. (By Mr. Bogle) You are familiar with the "Denali"?

A. Yes, sir.

Q. And with her construction?

A. Yes, sir.

Q. The cargo that was loaded on her well deck such as I have described, would that cargo be closer to the steering compass or to the standard compass?

A. Closer to the steering compass.

Q. And in your mind might it have more effect upon one compass than on the other?

A. Very probably.

(Testimony of G. Edwin Thompson.)

Q. And when you referred to local attraction, I will ask you in your experience what is the most common form of local [2667] attraction that has an effect on a compass?

A. The cargo.

Q. Now, Mr. Thompson, if you had adjusted this compass and compensated it down as close as you could before this vessel loaded cargo, and she had afterwards put this deck cargo on which I have described, would your adjustment and deviation card be one that the master could rely on?

A. No, sir.

Mr. Ryan: Just a minute. The witness has stated that all he knows, under the statement that Mr. Bogle made, was a mere possibility. Now, he is being asked to state positively what the effect of something is there, and the conditions as shown by the evidence and in the record, introduced by the petitioner itself, established that the loading was such that this iron could not affect the cargo in the opinion of the man that loaded the ship, and here they are speculating on the opposite evidence, even calling this man's attention to the actual loading.

The Court: Objection overruled. The witness may go into that.

Mr. Bogle: Read the question.

(Question and answer read as follows:

“Q. Now, Mr. Thompson, if you had adjusted this compass and compensated it down as close as you could before this vessel loaded cargo, and she had afterwards put this deck

(Testimony of G. Edwin Thompson.)

cargo on that I have described, would your adjustment and deviation card be one that the master could rely on? [2668]

A. No, sir.”)

Q. (By Mr. Bogle) Why not?

A. Our card is for the conditions existing at the time of adjusting, and not afterwards.

Q. What is the condition of the ship when you make your adjustment?

A. Well, it is usually light. Sometimes it has part cargo.

Q. Assuming that after the deck cargo is on the master took azimuths from the standard compass over fourteen points, would the error found by those azimuths be more accurate than a compensation that you had made before the cargo was loaded?

Mr. Ryan: That is objected to on the ground that the full conditions are not stated as shown by the evidence, and on the ground that the witness is asked to speculate as to how somebody else did something else, and how it compared with some previous condition. That is purely speculative and not based on facts.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Mr. Bogle: Read the question.

(Testimony of G. Edwin Thompson.)

(Question read as follows:

“Assuming that after the deck cargo is on the master took azimuths from the standard compass over fourteen points, would the error found by those azimuths be more accurate than a compensation that you had made before the cargo was loaded?”)

A. It would be.

Q. (By Mr. Bogle) And after those azimuths were taken, Mr. Thompson, of what use would your deviation card be? [2669]

A. None for that trip.

Q. What was the condition of the ship when you adjusted and compensated the compasses in 1933?

A. I haven't any record of that here.

Q. I mean, do you know of your own recollection whether she was loaded or not?

A. No, I don't remember.

Q. There is nothing to show that?

A. No.

Mr. Bogle: That is all.

Recross Examination

By Mr. Ryan:

Q. If the ship is loaded there is always a record in that book of the fact that the ship is loaded, isn't there?

A. No.

Q. Referring to the memorandum book that you have there in your hand.

(Testimony of G. Edwin Thompson.)

A. No.

Q. Well, there are many references there to the ship being loaded, are there not?

A. None that I know of.

Q. Well, I will call your attention to some. I will return to that in just a minute. Now——

Mr. Bogle: (Interposing) I might ask one question more. May I, Mr. Ryan?

Mr. Ryan: All right.

Mr. Bogle: Have you the log book there?

The Witness: Yes, sir. [2670]

Mr. Bogle: Will you look at that and see what differences there were between the standard and the steering compass on North $\frac{3}{4}$ West and on North $\frac{3}{4}$ East, if you find the latter entry.

Mr. Ryan: Now, I object to that on the ground that the officer of the ship who made the entries has already testified that he made entries North $\frac{3}{4}$ West in there which were false and he knew them to be false at the time that he made them.

Mr. Bogle: I object to that statement, if Your Honor please.

Mr. Ryan: And I do not think that that is a proper ground for calling a witness—an expert witness on now——

The Court: (Interposing) Objection overruled.

Mr. Bogle: I object to that statement, if Your Honor please. That is not the testimony.

The Court: I do not recall any such testimony. But I also recall what was said that counsel is now referring to.

(Testimony of G. Edwin Thompson.)

The Witness: I found a North $\frac{3}{4}$ West by the standard compass and a North $\frac{3}{4}$ West by the bridge compass here on the 19th.

Mr. Bogle: That is all.

Q. (By Mr. Ryan) Will you look at the log book and note the difference between the standard and steering compasses on this trip?

A. The whole trip?

Q. Yes.

Mr. Bogle: I do not think that that is proper [2671] recross.

Q. (By Mr. Ryan) Do you see that in each case the steering compass course is to the west of the standard compass course?

The Court: We are not playing a game of tit tat, and trying to determine which one has a chance to say "tit" last, or "tat" last.

Mr. Bogle: It looks like it.

Mr. Ryan: Counsel interrupted me. I was not finished.

The Court: What was there on redirect to elicit this?

Mr. Ryan: I am almost through with him. I have just two questions—not more than two questions.

The Court: Proceed.

Q. (By Mr. Ryan) Will you look at the log book of the "Denali" that you have in your hand and note the difference between the standard and steering compasses on this voyage in May, 1935.

(Testimony of G. Edwin Thompson.)

A. Yes.

Q. Now, do you see that in each case the steering compass course is to the west of the standard compass course?

A. Not in every case.

Q. In how many cases is it?

A. In most of them it is.

Q. Now, name me one in which it is not.

A. On Northwest by West by the standard compass.

Q. And what was it by steering?

A. Northwest $\frac{3}{4}$ West.

Q. Well, outside of that single entry in that whole log [2672] book don't you see that in each case the steering compass course is to the west of the standard compass course?

A. Yes.

Q. That is, the difference is always—runs to the west, doesn't it?

A. Yes, sir.

Q. All right. Now, when you look at the deviation notes in your book which you made in July, 1933, on those same compasses, isn't it a fact that the differences sometimes are east and sometimes west, and sometimes zero?

A. I have not the book.

Q. Where is the book?

Mr. Long: Your co-counsel has it.

Mr. Ryan: Oh, yes.

Q. (By Mr. Ryan) I hand you the book, Petitioner's Exhibit 64—

(Testimony of G. Edwin Thompson.)

Mr. Bogle: (Interposing) May I admit that, to save a little time? Some of them are east, some of them are west, and some of them are nothing.

The Court: Well, it may be that he wishes to ask this witness that for some particular reason.

Mr. Bogle: All right.

A. They are.

Q. (By Mr. Ryan) In other words, there is a definite trend in one direction, isn't there, so far as the entries in the deck log of the "Denali" in May, 1935, are concerned?

A. Yes.

Q. And that direction is west? [2673]

A. Yes.

Q. Now, doesn't that indicate to you, as a compass adjuster, that there has been a change in the magnetic conditions concerning those compasses?

A. Yes.

The Court: Induced by any of these causes or reasons that you have spoken of?

The Witness: Yes. Probably the cargo.

Q. (By Mr. Ryan) Or what other reasons probably would cause that?

A. I cannot think of anything else that would cause that much difference.

Q. Retained magnetism in a ship—

A. (Interposing) No.

Q. (Continuing) Would cause a change in the deviation curve such as that indicates, would it not?

A. It would not cause four degrees difference between the two compasses.

(Testimony of G. Edwin Thompson.)

Q. Have you ever made any experiments to determine the amount of deviation that would exist under those conditions?

A. Not on this ship.

Mr. Bogle: Now, I object to this——

Q. (Interposing) You have not?

Mr. Bogle: I object to this as not being proper recross. This is repetitious. We have been all over this before, and he is starting all over again.

Mr. Ryan: No, I am not. I am practically through.

Mr. Bogle: It is all speculative, and it cannot be of any value. [2674]

The Court: Counsel may proceed in view of his statement that he is practically through.

Q. (By Mr. Ryan) In this book—in this memorandum book of yours, will you look at page 3495 to see whether there is any record there of whether or not cargo has been loaded at the time that that adjustment was made?

Mr. Bogle: I object to that as immaterial to this inquiry. I do not know what time this is.

The Court: That objection is sustained. Which one do you mean? At what time?

Mr. Long: And it has nothing to do with the "Denali", Your Honor; some other ship he is talking about.

Mr. Ryan: If the Court please, I asked the witness a while ago if there was not a record made in the book whenever there was a cargo loaded on

(Testimony of G. Edwin Thompson.)

the ship at the time that the adjustment was made, and he said there was not. I am just calling his attention to such a record.

The Court: Why do you not give him the page?

Mr. Ryan: I did give him the page.

The Court: Tell him to look at such and such a place or at such and such a page and state if he was not mistaken about that.

Mr. Ryan: Yes. I will do that.

Q. (By Mr. Ryan) Look at that page that I have just given you, 3495 and tell me now if you are not mistaken about there being no entry in the book at any time that cargo was loaded at the time that the adjustment was made.

A. You asked me if there were any in this book, and at that [2675] time I said "No," because I didn't find any.

Q. But you now do see one entry of that kind by looking here (indicating)?

A. Yes, sir. I explained before that only these notes were made when there was something bad around the compass, and when there was no such note made it was because there was nothing bad around the compass. Now, it says here, "Deviation with cargo on deck. Retort on deck", referring to the deck on a certain ship. That means that a certain bad condition was there, and that is why that entry was made.

Mr. Long: Now, I object to all this, if Your Honor please.

(Testimony of G. Edwin Thompson.)

The Court: That is asking him with reference to a collateral matter, as to whether adjustment conditions surrounding his work on other ships were similar or dissimilar.

Mr. Ryan: That is all.

The Court: You may be excused, Mr. Thompson. Call your next witness.

(Witness excused.)

Mr. Bogle: Would it be possible at this time, for the benefit of the Court to find out whether we can make any stipulation with reference to this book?

The Court: Is it now possible to do that?

Mr. Ryan: Yes.

Mr. Summers: I think that we will be ready to make a stipulation after we have had an agreement with respect to what should be photostated. [2676]

The Court: I think that you ought to be able to agree on photostating certain pages and let him have the book back.

Mr. Summers: Yes, Your Honor, but I think that we should not let the book be released at this time, but at a later time, so that we can have an agreement as to the pages of the book to be photostated.

Mr. Bogle: That is all right.

The Court: Very well. Call your next witness. I believe there is a witness on the stand. Captain Glass, will you resume the stand?

(Testimony of Sylvester Glass.)

Mr. Thompson, you are excused from further appearing as a witness unless you are recalled.

Mr. Thompson: All right.

SYLVESTER GLASS,

resumed the stand for further examination.

Mr. Ryan: If the Court please, before the examination proceeds, may I ask that the five arrows that this witness indicated on that chart be marked with some designation so that they can be differentiated from one another and identified—that is, let the witness mark them “1”, “2”, “3”, “4”, “5”, or “a”, “b”, “c”, “d”, and “e”, or something like that?

The Court: I do not think Mr. Bogle finished on that subject.

Mr. Bogle: No, no. I have got a few other marks that I want the witness to put on, and then I will have [2677] those identified.

Mr. Ryan: I wanted those designated before some others were put on there, or else we will never be able to find those five marks.

The Court: Your request is denied at this time. Proceed.

Further Direct Examination.

By Mr. Bogle:

Q. Captain, you have made certain marks here in blue pencil——

(Testimony of Sylvester Glass.)

Mr. Ryan: (Interposing) May I offer this little sketch that the witness Thompson wrote on a piece of yellow paper—that is, the witness Thompson—in evidence as Claimants' Exhibit—

Mr. Bogle: (Interposing) I would object to that in the absence of the witness. I have not seen the sketch, and I have not had the opportunity of examining him on that.

The Court: See if upon further examination, Mr. Bogle, that cannot go in. The Court will act upon that later, if you will call the Court's attention to it after counsel has had a chance to inspect it.

Mr. Ryan: Yes. Could I have it identified by the clerk?

The Court: It may be marked for identification Claimants' A-13 in connection with Thompson's testimony.

(Sketch on yellow paper made by witness Thompson marked for identification as Claimants' Exhibit A-13.) [2678]

The Court: Now, you may proceed.

Q. (By Mr. Bogle) Captain, in your experience making voyages through Hecate Straits and Caa-mano Passage, what was your usual route?

A. Well, taking up deep tankers, coming up with tankers there we used to come straight up through Hecate Straits.

Q. What is that?

A. When I was on a regular run up there I always used to go out through Brown's Passage,

(Testimony of Sylvester Glass.)

through Caamano Passage to the west coast of Prince of Wales Island.

Q. Now, Captain, I wanted you to go back and tell me whether or not in your own experience in these waters you know the set of the tide on an ebb current—the set of the water, I should say, on an ebb current adjacent to Brown's passage and to the westward?

A. Yes, sir, I do, from the set of the vessel when I was taking it through there.

Q. Will you note that with arrows and with a blue pencil?

Mr. Ryan: Now, if the Court please, that brings up that very point that I spoke about before. There are already five blue arrows marked on this chart by the witness——

The Court: (Interposing) Objection overruled.

Mr. Bogle: I am going to identify it.

The Court: If on cross examination you find it necessary to have something explained, you may be accorded that right.

The witness: On an ebb tide I noticed the current setting through here (indicating) coming up Triangle [2679] Island——

Q. (By Mr. Bogle) "Through here" does not mean anything.

A. Through Brown's Passage.

Q. Yes.

A. Setting very remarkably to the westward. Also through these passages, through here and running all along here (indicating on chart).

(Testimony of Sylvester Glass.)

Q. Well, that does not mean anything in the record.

A. Well, through Hudson's Bay Passage the current always set to the westward and getting up under the point tip of Dundas Island and getting towards Prince Lobos Island.

Q. Prince Lebo, isn't it?

Mr. Ryan: Now, please. I want the record to show that Mr. Bogle is suggesting something to the witness.

The Court: Objection sustained. Proceed.

Mr. Bogle: I will ask leave then to withdraw that. I didn't think that there was any objection to that.

A. I mean Prince Lebo Island. I always found the speed of the vessel accelerated for a certain distance, which would set the current practically up in this direction (indicating).

The Court: Well, now, that does not mean——

Mr. Bogle: (Interposing) I will have those marked.

The Court: Indicate it in some way.

Q. (By Mr. Bogle) The set of the current which you have indicated with a blue arrow at Brown's Passage, will you mark that with an "A"?

(Witness marks on chart.) [2680]

Q. And the set of the current at Hudson's Bay with a "B".

(Witness marks on chart.)

(Testimony of Sylvester Glass.)

Q. And the set of the current off Prince Lebo with a "C".

(Witness marks on chart.)

Q. Now, Captain, further out from a point abeam of Triple Island—say ten and a half or eleven and a half miles off, do you know what the set of the water is on an ebb tide?

A. On an ebb tide in my experience passing along, any of this land where there is any open passage through here, (indicating on chart), the tide would invariably set to the westward.

Q. Now, Captain, when you identify these first arrows that you drew, I suggest that you make them a little longer so that we can see them.

A. All right.

(Witness marks on chart.)

Q. Will you just follow along now with the letter "D" on the first arrow off of Dundas, and then "E" and "F".

(Witness marks on chart.)

Q. And "G".

(Witness marks on chart.)

Q. Now, I will ask you if the arrows which you have written on the chart with a blue pencil, starting with the one marked "A" up to and including the one marked "G" in your experience has been the set of the tide on an ebb tide——

Mr. Ryan: (Interposing) I object to that as leading.

(Testimony of Sylvester Glass.)

Q. (Continuing) At what period of the tide?

[2681]

Mr. Ryan: Now, I object to that as leading.

The Court: That objection is overruled.

A. I have found in all my trips through Caa-mano Passage that on a vessel making ten miles an hour, or ten knots an hour, I always invariably set on top of Zayas Island. At times I had to haul the ship maybe a distance of,—getting the bearing off of Lebo,—as much as two and a half points to clear Zayas Island.

Q. Captain, I wanted you to identify these various marks from “A” to “G”. What I am interested in now is whether those arrows—any one of those arrows represent the tide at a different time, or whether they all represent the tide at the same period.

A. No, sir. My experience has been that I have found the tide running that way at both stages of the tide—invariably running in that direction.

Q. Well, now, Captain, at what stage of the ebb tide have you found the tide running as indicated by those arrows?

A. Well, we come through there——

Q. (Interposing) Well, I mean at the first hour, or the second hour, or at the end of the ebb.

A. Well, at the first hour you will find it running through there—practically all through the run of the ebb tide the current will run that way.

The Court: At this time we will take a ten minute recess.

(Recess) [2682]

Mr. Bogle: Your Honor, we have Mr. Murphy here in connection with these plans, and I am wondering whether Your Honor wanted to proceed with this witness, Capt. Glass, or go on with Mr. Erlands and Mr. Murphy, who are here.

The Court: Is Mr. Murphy needed back at his business?

Mr. Bogle: I imagine that he is. I know that Mr. Erlands is, because he is the stevedore boss. I am willing to accommodate counsel.

The Court: Is there any objection to trying to finish with Mr. Murphy? As I understand it, he has come back in connection with those plans.

Mr. Bogle: That is correct, Your Honor.

The Court: The plans which were produced here this morning, or the blueprints of the plans, or photostatic copies.

Mr. Ryan: I haven't any objection, except that I have noticed that Mr. Murphy has been around here throughout this trial.

The Court: I have noticed in the last two or three days that we have worked that he was not around quite so much. You can step down, Capt. Glass, and you may come forward, Mr. Murphy.

E. M. MURPHY

recalled as a witness on behalf of Petitioner, being previously duly sworn, testified as follows:

Direct Examination.

By Mr. Bogle:

Q. Mr. Murphy, you have already been sworn in this case? [2683]

A. Yes, sir.

Q. Have you been able to obtain from the company a copy of the drawings and blueprints of the "Denali"?

A. I have here a print known as the General Arrangement Plan, which is the builder's print of the "Denali" and the sister ships.

Q. That is marked by the hull number?

A. All three hull numbers, Nos. 86, 87 and 88. The "Denali" was built as the "Jeptha", as Hull No. 86.

Q. So this is a correct drawing of the steamship "Denali"?

A. As she was built, yes.

Mr. Bogle: We now produce this for counsel, in response to his demand.

Mr. Summers: We suggest, if Your Honor please, that since the Claimants have produced a plan bearing the same number that Mr. Murphy make comparison, and that the plan produced by the Claimants be admitted in evidence, since it has been already identified, if comparison shows that it is the same plan.

(Testimony of E. M. Murphy.)

The Court: Do you want to cross examine on that, Mr. Ryan?

Mr. Ryan: I want to ask if this is the same plan.

Q. (By Mr. Ryan) Isn't this plan you have just produced the same plan, exactly, as Claimants' Exhibit A-8 for Identification?

A. Yes; it is the same. It is the plan for Nos. 86, 87 and 88.

Mr. Ryan: I have no objection to counsel offering in evidence that plan.

The Court: The one that Mr. Murphy brought today has [2684] not been marked, has it?

Mr. Bogle: It has not been, Your Honor.

The Court: Is there any objection to introducing in evidence at this time Claimants' Exhibit A-8?

Mr. Ryan: I would like to have the one produced in evidence. This is our own copy, Your Honor.

Mr. Bogle: And this is our copy, too, but we will put it in evidence.

The Court: One of them has been marked.

Mr. Long: So the record will be clear, this one we now have, that Mr. Murphy has produced, was taken off the steamship "Oduna", which was framed under glass, and there was a copy of it on the "Denali", as I stated this morning, which was lost on the ship.

The Court: It is identical?

Mr. Bogle: It is identical, Your Honor.

(Testimony of E. M. Murphy.)

The Witness: Yes. There were three ships that were identical, Hulls Nos. 86, 87 and 88, and the Alaska Steamship Company owned all of them.

The Court: The copy of the plans produced by Mr. Murphy just now, which are identified and marked as Petitioner's Exhibit No. 65, there being no objection to them, the plans are now admitted in evidence.

Mr. Bogle: These plans are produced in response to a demand.

The Court: Yes.

Mr. Bogle: And we will offer them in evidence.

The Court: Yes; as Petitioner's Exhibit No. 65, now admitted.

(Plans received in [2685] evidence Petitioner's Exhibit No. 65.)

Mr. Bogle: Is there any examination, Mr. Ryan?

Mr. Ryan: Yes.

Cross Examination

By Mr. Ryan:

Q. Is that the only builder's plan of the "Denali" that you have been able to find?

A. Of the general arrangement, yes.

Q. Well, of any other arrangement, or any part of the "Denali"?

A. That is all.

Q. You haven't been able to find any other plans covering the steamship "Denali"?

(Testimony of E. M. Murphy.)

A. There is a midship section.

Q. Well, I would like to see that.

A. I haven't seen it. You have the midship section some place, the plan, and it may be the same.

Mr. Bogle: Would you look these documents over, Mr. Murphy, and see if any of them pertain to the "Denali". (Handing certain documents to the witness.)

Mr. Ryan: You are referring to the plans you produced this morning at the opening of court?

Mr. Bogle: I am.

The Witness: These are not. This is Hull No. 85 (showing). Here is one of her boilers, if it will do any good. It is not an arrangement plan. And this midship section is for Hulls Nos. 83, 84 and 85, and while they may be similar, they are not an actual print of her, [2686] because she was built as No. 86.

Mr. Bogle: Then you could not identify that plan?

The Witness: No.

Mr. Bogle: Are you able to identify any of these as being the actual plans of the "Denali"?

The Witness: No.

Q. (By Mr. Ryan) I show you Claimants' Exhibit A-9 for Identifictaion, and ask you if that is not a builder's plan of the midship section of the steamship "Denali"?

A. No. I see no identification here.

Q. What hull numbers does that refer to?

(Testimony of E. M. Murphy.)

A. This is for Hull 2255 and Hull 2254 and Hull 2253.

Q. Doesn't that say on the title of it "Midship section, Hulls 86, 87 and 88"?

A. Yes, but here it says—

Q. (Interposing) Doesn't it say that?

A. Whereabouts?

Q. Right there (indicating); the title plan, in large letters, "Midship sections, Hulls 86, 87 and 88"?

A. That is correct. This is No. 86.

Q. So you can identify that plan as being the midship section plan of the steamship "Denali"?

A. It is Hull No. 86, yes.

Mr. Ryan: I offer that in evidence as Claimants' Exhibit A-9. There are two builder's plans, Your Honor.

The Court: What was his final statement as to whether or not that pertained to the "Denali"?

Mr. Ryan: That is the midship plan.

The Witness: That is the midship section, Hull No. 86. [2687]

The Court: Then you have corrected what you previously said?

The Witness: Yes. It had three other hull numbers which I do not have identified, but Hull No. 86 I can identify.

Q. As being the steamship "Denali"?

A. As being the steamship "Denali". That is her hull number.

(Testimony of E. M. Murphy.)

The Court: Very well.

Q. (By Mr. Ryan) This first plan that you have produced, this general arrangement plan, Petitioner's Exhibit No. 65, what is this object up here (showing), extending out toward the pilot house of the "Denali"?

A. It is marked as a 30 ton steel boom.

Q. It is a cargo boom, is it not?

A. No, sir; it is what we call a heavy lift boom, a Jumbo boom.

Q. And there is an iron strap around the end of that boom, is there not?

A. That is correct.

Q. And there is a block, a steel block, right below it, or gin block, is there not?

A. That is right.

Q. How far is that steel boom from the standard compass of the "Denali" as shown on that plan?

A. I would have to scale it. This is $\frac{1}{8}$ of an inch to the foot; every $\frac{1}{8}$ of an inch on this plan is equal to a foot.

Q. Can you tell us, please?

A. Not without a ruler. [2688]

Q. Well, here is a ruler.

A. Now, what is your question?

Q. What is the distance from that steel cargo boom to the standard compass of the "Denali", as shown on that plan?

A. You mean the boom in that position?

Q. Just as it is shown on that plan. There is the boom, isn't it (indicating).

(Testimony of E. M. Murphy.)

A. That is correct. And in that position there it is 32 feet to the end of the boom.

Q. What is this object here that is extending in a vertical direction, just vertical of the pilot house?

A. That is a permanent Sampson post, that is never moved. That is built in and sets off to the side in this position. Here is one, and here is the other (indicating). They are known as King posts or Sampson posts. In this particular print it is known as a King post. It is shown here and here (indicating). They are permanent and have been on the ship, of course, since she was built.

Q. And that is a boom extending up at about a 45 degree angle from it?

A. Yes.

Q. That swings around, or up and down, as you desire it?

A. Well, you can hoist it up with this top list, or you can swing it around by the guys.

Q. Those are used in connection with the loading of the cargo, are they not?

A. Yes; loading and discharging.

Mr. Summers: Just for the record, if the Court please; what disposition does the Court wish to make of Claimants' [2689] Exhibit A-8?

The Court: What request is there before the Court?

Mr. Summers: Only to withdraw it, in view of the fact that a duplicate has been introduced as Petitioner's Exhibit No. 65.

(Testimony of E. M. Murphy.)

The Court: Is there any objection to withdrawing it?

Mr. Bogle: Mr. Ryan says it has never been introduced?

Mr. Summers: It has not been. It has only been identified.

Mr. Bogle: Well, I have no objection.

The Court: Claimants' Exhibit No. A-8 is now withdrawn and re-delivered to the counsel for Claimants, the Clerk being no longer responsible therefor.

Mr. Ryan: That is all, Your Honor.

(Claimants' Exhibit No. A-8 withdrawn.)

Q. (By Mr. Bogle) Mr. Murphy, referring to this Petitioner's Exhibit No. 65, the measurements you have taken of the steel boom are on the assumption that it is fore and aft of the ship, and closest to the position of the pilot house, isn't it?

A. Yes. This boom is not carried in that position, but is brailed up against that mast. This is only in that position, or some other equivalent position, when they are loading or discharging. When she is carried she is brailed up against the mast in a vertical position.

Q. Over how much of an arc does that boom swing in loading cargo?

A. Well, it will swing from the dock to amidships, over the [2690] hatch. It may be on either side, depending on which side of the ship you are

(Testimony of E. M. Murphy.)

loading, but ordinarily you would only swing it half the width of the ship, plus part of the dock.

Q. It is up against the mast, as you say, and when it is so carried, how far is it from the standard compass?

A. About 67 feet.

Q. Is that a part of the permanent equipment of the ship?

A. Yes, that is permanent; put on the ship as soon as she was built.

Mr. Bogle: That is all.

The Court: You may be excused.

(Witness excused.)

Mr. Bogle: Now, do they want Mr. Erlands, in order to complete with him? You were waiting for this blueprint in order to examine Mr. Erlands?

The Court: May Capt. Erlands be excused from further appearing as a witness?

Mr. Ryan: He was to be called back when the plans were produced.

The Court: Then he may take the stand. You may now finish your cross examination with respect to this witness, Capt. Erlands.

ERLAND L. ERLANDS,

recalled as a witness on behalf of Petitioner, having been first duly sworn, testified as follows:

Further Cross Examination

By Mr. Ryan: [2691]

Q. What was the diameter of the 12 ton boiler that was on the port side of the forward well deck, near the pilot house of the "Denali", when she sailed in May, 1935?

A. That 8 ton boiler?

Q. The 12 ton boiler, bound for Blue Fox Bay, that you identified or testified to this morning?

A. Well, I could only guess that. It would be around nine feet, I guess.

Q. And it was shored up with dunnage underneath, wasn't it, on the deck?

A. Yes; with cribbings, beddings.

Q. How high was the top of that boiler above the well deck?

A. Oh, I wouldn't say. It would be over seven or eight feet.

Q. You mean the dunnage was seven or eight feet?

A. No; no; the boiler.

Q. I thought you said the diameter of the boiler was nine feet?

A. Yes.

Q. What is the height of the dunnage, in addition to that?

(Testimony of Erland L. Erlands.)

A. Oh, the dunnage we use is generally, oh, 6 by 8, 8 by 8—I don't remember, offhand.

Q. Do you know how high the bottom of the boiler was above the well deck, or not?

A. I should judge six or eight inches.

Q. So the height of the boiler above the deck, that is, the top of the boiler, would be 9 feet, is that right?

A. About 9 feet, yes.

Q. Then this dump truck that was right there in front of the pilot house, what was the height of that? [2692]

A. Well, the tires, they stood right on deck, the rubber tires, and the height of the truck, I would say—oh, about 7 or 8 feet, the cab.

Q. Was that an ordinary steel boiler, that 12 ton boiler?

A. It was a steel boiler, yes.

Q. And the truck was an ordinary steel truck, was it?

A. An ordinary dump truck.

Q. The ordinary steel dump truck, I take it?

A. Yes. I don't remember whether it was steel or wood.

Mr. Long: The testimony was that it was an 8 ton boiler; is that what you refer to? I do not mean to interrupt?

Mr. Ryan: No; I mean a 12 ton boiler.

Q. (By Mr. Ryan) There was another boiler there, an 8 ton boiler, that you testified to. What

(Testimony of Erland L. Erlands.)

was the diameter of that? The boiler that was stowed on the forward well deck, just forward of the pilot house?

A. Well, you referred to the boiler for Blue Fox Bay—

Q. That is the 12 ton boiler, yes. Now, I am referring to the 8 ton boiler.

A. Well, owing to the circumstances I would say, oh, around 6 or 8 feet—6 or 7 feet.

Q. 6 or 7 or 8 feet?

A. Something like that.

Q. And then how high was that shored up, or dunnaged up?

A. The same as the other; the same kind of dunnage.

Q. What was the total weight in tons of the iron or steel cargo that was stowed on deck, forward of the pilot house of the "Denali", when she sailed on this voyage in May, 1935?

A. Well, that I don't know. I never figured it out. [2693]

Q. Well, can you give us that figure by refreshing your memory, or from any papers, or from this cargo plan that you have produced?

A. Well, I could tell practically—those trucks would go about two and one-half tons apiece.

Q. How many trucks were there?

A. Well, four trucks on deck.

Q. Forward of the pilot house?

A. Five; yes, on the forward deck?

(Testimony of Erland L. Erlands.)

Q. Five of them?

A. Yes..

Q. How many boilers were there, steel boilers—two?

A. One 12 and one 8 ton.

Q. What other steel or iron cargo was stowed on the forward deck?

A. I don't remember right now. I think we had either five or six road graders, and they go about, oh, three and one-half to four tons apiece.

Q. They are just ordinary steel road graders, is that it?

A. Yes; what they use on the road.

Q. Those were Government property?

A. Yes. Then there was one 20 ton rock crusher.

Q. Just an ordinary steel rock crusher, is that right?

A. Yes. That was dunnaged on heavy skids.

Q. What other steel or iron cargo was on the forward deck?

A. Then we had an engine. I think, if I ain't mistaken, that was a Diesel engine for Crab Bay, and I believe that one went around 6 or 7 ton.

Q. That was steel, too?

A. That was in a case; that was in a box, all crated in. [2694]

Q. I see.

Q. Then on No. 2 hatch we had a tank for Fairbanks that weighed about two and one-half or three ton before we hoisted it in with a single gear. And

(Testimony of Erland L. Erlands.)

she also had a tank on the forward hatch, the same type of boiler, which was hoisted in with single gear.

Q. Those were just ordinary steel boilers?

A. Tanks.

Q. Tanks; yes.

A. Gasoline tanks, I guess that is what they were going to use them for. Then of course on the port side forward we had from fifteen to eighteen thousand feet of lumber.

Q. I am only interested in the iron or steel.

A. Yes. That is about all there was.

Q. How many tons of steel or iron cargo were there in the forward holds of the "Denali" on this voyage in May, 1935?

A. Well, in the forward hold of the "Denali" it is pretty hard for me to say how many tons it was, because it was collapsed cans, salmon cans. We loaded them at the American Can Company.

Q. What is your best estimate of the amount of tons of those compressed cans that were in the forward holds of the "Denali"? Take the 'tween decks first, the forward 'tween decks. The "Denali" had 'tween decks, didn't she?

A. She had 'tween decks.

Q. And No. 1 'tween deck and No. 2 'tween deck were forward of the pilot house bulkhead, were they not?

A. Yes, sir. [2695]

Q. How many tons of those compressed tin cans, or iron cans, were there in the No. 2 'tween decks?

(Testimony of Erland L. Erlands.)

A. There were none.

Q. How many were there in No. 1 'tween decks?

A. In No. 1 'tween deck there were no cans—it was merchandise, bales.

Q. How many tons of those compressed iron or tin cans were there in No. 2 lower hold?

A. In No. 2 lower hold—

Q. (Interposing) On the "Denali" on this voyage, in May, 1935?

A. That is pretty hard for me to say, how many tons it was. When we were down there to load an order, when we went down there we were ordered to load so many thousand cans, so many thousand cases—and each case I believe is about 300 or more of those collapsed and pressed cans—I believe a case like that weighs around, oh, 75 to 100 pounds, apiece.

Q. How many cases of those compressed iron cans were in No. 2 lower hold?

A. In No. 2 lower hold?—Well, I haven't got that on the cargo plan here—it was between No. 1 and No. 2 lower hold.

Q. It was a very large shipment, wasn't it, on the "Denali"?

A. Yes; in that forward hold, but in the No. 2 lower hold we had bulk coal, and we had a bunch of herring barrels, and then we had cans stowed on top, maybe six or eight thousand cans, I should judge.

Q. How many tons of compressed iron cans were

(Testimony of Erland I. Erlands.)

there in No. 1 and No. 2 lower holds of the "Denali" on this voyage, in [2696] May, 1935?

A. That I couldn't tell you.

Q. Well, you loaded them, didn't you?

A. Yes, but I never figured how many tons of cans would go, because they have that on the regular manifest receipts that they receive from the American Can Company. I never figured that out.

Q. There is some record that your company keeps of that, isn't there?

A. Yes.

Q. What record is that?

A. They have the bills of lading.

Q. Well, they are marked here, I guess, and we can find them.

Mr. Ryan: That is all, Your Honor.

Redirect Examination.

By Mr. Bogle:

Q. Mr. Erlands, these weights that you have given us are merely approximate, aren't they?

A. They are just approximate, a guess. That is all I can do. When the cargo is taken in by the Alaska Steamship Company they have the Traffic Department there, and the checkers, and they take care of the weight and measurement, and that is all put on the bills of lading.

Q. So the weight on the bills of lading would be much more accurate?

A. Oh, that would be accurate.

(Testimony of Erland L. Erlands.)

Q. Now, these cans that you have spoken of, counsel referred to them as iron or tin—what are they—what is the construction of them? [2697]

A. Well, they are regular tin cans, collapsed, salmon cans. In former years they put them up single, and now they compress them to get more in the case.

Mr. Bogle: That is all, Mr. Erlands.

Recross Examination.

By Mr. Ryan:

Q. The "Denali" had a steel boom forward, didn't she?

A. Yes.

Q. What is that steel boom used for, that is, what size and weights?

A. Well, we use it for lifts over 5 tons.

Q. How many lifts over 5 tons did you have forward on that ship?

A. Well, I will have to look at the cargo list.

Q. At any rate, you had some, didn't you?

A. I had some, yes.

The Court: That is all. You may be excused, Captain.

Mr. Bogle: I want to ask him one question.

The Court: You may do so.

Q. (By Mr. Bogle) Was that steel boom stowed above the deck?

A. Yes; we hoisted it up above; we hoisted it up against the mast.

The Court: Well, you may be excused.

(Witness excused.) [2698]

SYLVESTER GLASS,

recalled as a witness on behalf of the Petitioner, having been previously duly sworn, testified as follows:

Further Direct Examination.

By Mr. Bogle:

Q. Capt. Glass, you were drawing these arrows on Petitioner's Exhibit No. 33.

A. Yes, sir.

Q. From your experience what is the direction of the current on a flood tide in the vicinity of Brown Passage?

Mr. Ryan: I think the witness has already testified on that point, Your Honor, and I object to it as repetition.

The Court: I remember the ebb tide, but I do not remember the flood tide. The objection is overruled.

The Witness: The flood tide, coming out of Brown's Passage, Hudson's Bay Passage, practically reverses itself and runs to the eastward, and through these passages.

Q. In other words, it would reverse the arrows "A-B"?

A. Yes.

Q. After you got to the end of Dundas Island, what is the state of the flood tide?

A. To my experience, in the vicinity of Zayas Island, the tides stay on top of Zayas Island, regardless of the direction of the tide.

(Testimony of Sylvester Glass.)

Q. By that you mean what? You say they sit on top of it—what do you mean?

A. Set towards it, set to the left.

The Court: Set to the left, looking northward?

The Witness: Yes, sir; looking to the north.

[2699]

Q. (By Mr. Bogle) Captain, what has been your experience as to the accuracy of the current arrows placed on these charts, or on this chart, No. 2828, Petitioner's Exhibit No. 33, both as to the direction of the current and the predicted strength of the current, both ebb and flood?

Mr. Ryan: It is understood that all of this line of examination is subject to the objection that Mr. Summers and I have made.

Mr. Bogle: I do not know what the objection is.

The Court: I do not recall what the record shows, but whatever it is, the record may so show.

The Witness: Well, from actual experience, I will say that they are not reliable.

Q. (By Mr. Bogle) Do the current tables give you any information on the subject?

A. The current tables do not, but there is an appendix on the chart there which tells you—which is supposed to be the stage of the tide, and the velocity, which is absolutely out of the absolute condition as I have found them there.

Q. What has been your experience as to the period when the ebb starts, or the flood starts, with reference to the contradiction on this chart?

(Testimony of Sylvester Glass.)

A. I would not depend on it.

Q. Is there any regularity as to the commencement of the ebb or the flood current?

A. No, sir. I figure it all depends upon the height of the tide, the weather conditions, the wind on the outside, the influence on the tide.

Q. How far, in your experience, does the actual current, [2700] both ebb and flood, vary from the predictions as to the time?

Mr. Ryan: Objected to unless the circumstances are stated, and they are made to fit the reference to the record.

The Court: The objection is overruled. If you can answer the question, Captain, you may do so.

A. The Witness: I have found if you take the tide table, the prediction time of high or low water, at Port Simpson, which is the reference that they use for all those waters, that sometimes it differs as much as three hours from the prediction time in the tide table.

Q. That is the prediction time of what?

A. Of the height—of the changes of the tides.

Q. Does the three or four hours refer to the current or the height of the tide?

A. The tide tables, to my knowledge, only give you the predicted height of the water, but do not give you the prediction of the time of any current in that vicinity.

Q. What I am getting at, Captain, are the cur-

(Testimony of Sylvester Glass.)

rents; do they coincide with the height of the water in this vicinity?

A. No, sir.

Q. In other words, does the ebb current coincide with the last of the last flood tide, the height of the high water?

A. No, sir.

Q. Capt. Glass, in navigating Southeastern Alaska, and particularly through these waters, Caamano Passage, in what capacity have you acted on board steamships, as master or pilot?

A. As master and pilot, and in the capacity as chief officer. [2701]

Q. What position, as the pilot of those ships—what position does the captain occupy aboard the ship?

A. Well, a pilot is one of the regular crew, that is, one of the watch officers on board that ship, in charge of the navigation on his watch.

Q. Is he a man who is required by the certificate, or is he an extra man?

Mr. Ryan: Just a minute; I object to that as entirely immaterial and irrelevant, as not being connected with the vessels of this company, or with the "Denali", and not under the circumstances shown to have any relevancy at all to this case.

Mr. Summers: And we also object to it as leading.

Mr. Bogle: Yes; it was leading.

(Testimony of Sylvester Glass.)

The Court: Yes; it was leading, and the objection is sustained.

Q. (By Mr. Bogle) Captain, what is the position of the pilot aboard a vessel, with reference to the master of the ship?

Mr. Summers: Just a minute; if Your Honor please; it seems to me that unless he has had experience with the Alaska Steamship Company this witness is not qualified. The articles of the "Denali" are in evidence and they speak for themselves as to the relative positions of the men assigned thereon.

The Court: The objection is overruled.

Mr. Bogle: Will you read the question?

(Last question read.)

Mr. Ryan: May I object further on the ground that the duties of the pilot are defined by his license, and [2702] by the capacity in which he ships, and are defined by the laws of the United States, the regulations of the Department of Commerce, the Steamboat Inspection Service, and are capable of proof by writing, by statute, and this is not subject to change by oral testimony of this sort.

Mr. Bogle: I do not know of any specific writing that you can refer me to, Mr. Ryan. They are not required to be carried, and that is what I am getting at.

The Court: The objection is overruled.

Mr. Ryan: An exception, please.

The Court: Exception allowed.

(Testimony of Sylvester Glass.)

Mr. Bogle: I would like to have the question read. (Question re-read.)

Q. (By Mr. Bogle): Who is the superior officer, that is what I mean?

A. Well, I would say that as far as the navigation duties are concerned, that he is next to the master.

Q. You say "he"; who do you mean?

A. The pilot.

Mr. Ryan: I move to strike the answer.

The Court: The motion is denied.

Q. (By Mr. Bogle) Captain, have you ever navigated Caamano Passage at night?

A. Yes, sir.

Q. Are there similar passages to that in other waters of Southeastern Alaska?

A. We have got many, many of them, that are far worse than that.

Q. In navigating waters of that kind, to what extent do you [2703] depend upon your compass?

Mr. Ryan: That is objected to upon the ground that it calls for the evidence of this witness under different circumstances, not connected with this case.

The Court: The objection is overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

The Witness: As near as I can see the land, and have my landmarks, it is very little that I use the compass.

(Testimony of Sylvester Glass.)

Q. When you pick up a landmark thereafter, to what extent do you steer a compass course?

A. Well, may I explain that; supposing I was going up in Caamano Passage, going by magnetic course that would lead me to mid-channel, and I tell the quartermaster at that time to put her on that course, which would be about North half, or North $\frac{3}{4}$ West, after watching the way the ship was heading and setting either one side or the other, I would probably give him an order to change the course three or four times; say a right half point, or three-quarters of a point, or something like that—at some time after making those changes, after I went through there, I would inquire of the quartermaster how he was heading, just to see the difference, the drift of the ship between courses, what she should have made, and what she was actually making.

Mr. Summers: I move to strike that answer as not responsive, and not material as to what this witness would do under other circumstances.

The Court: The motion is denied.

Q. In taking a course through a narrow passage, assuming that [2704] you have to change, make changes in order to offset the set of the current, or for other causes, in order to make your original course good, is it customary with Alaska pilots and Alaska navigators to enter those changes in the log book?

Mr. Summers: Just a minute; I submit, if Your Honor please, that this is improper and incompetent

(Testimony of Sylvester Glass.)

to prove local custom with reference to this particular company, and in violation of the obligation of masters and pilots, as recognized by the courts.

The Court: Objection overruled.

The Witness: No; it is not. However, if the vessel showed a decided trend to run to one side, then we would generally make a note on the margin of the log book to the effect that the vessel set one way or the other.

Q. (By Mr. Bogle) When do you make that note?

Mr. Ryan: Just let him answer?

Q. Go ahead; I am perfectly willing, if you have anything more to say, Captain.

A. No; that is it.

Q. When did you make that note?

A. Oh, generally, as I get through any of those narrow passages, and make certain that the set would be one way, because she is liable to set the other way as we go along.

Q. How long did you operate out of the Port of Seattle as an officer and master?

A. I got my first command in 1920.

Q. With what regularity have you operated out of the Port of Seattle since 1920, as a master?

A. Sailing out of here continuously. [2705]

Q. Do you know the custom of this port—that is, the Port of Seattle, with reference to compass adjusting?

A. I know the custom that has been followed by the different companies that I have worked for.

(Testimony of Sylvester Glass.)

Q. What is that custom?

A. Why, when I thought that my compasses needed adjusting, I notified my superintendent to that effect and I would have them adjusted.

Q. Do you know of any custom in this port of having compasses adjusted at any periodic regularly stated time?

A. I have never heard of it.

Q. How many years, or for what period of time were you with the Northland Transportation Company?

A. I was there about two years.

Q. During what years?

A. I just left there—I believe it was—I left the Northland Steamship Company this March, I believe—1937.

Q. And were you with that company for two years prior to 1937?

A. Yes, sir, about two years.

Q. What was the custom of the Northland Transportation Company with reference to compass adjustments during the period that you were with them?

A. Why, I requested adjustments—the master requested adjustments if he thought that they were necessary.

Q. In your experience is a period of twenty-two months an unusual period between compass adjustments?

(Testimony of Sylvester Glass.)

A. No, sir.

Q. Now, as a master under what circumstances would you deem [2706] it necessary to have your vessel swung and your compasses adjusted by a shore adjuster?

A. Well, if I noticed that my compasses have acquired an unusual error, or an excessive error, or were sluggish, why, then, I would request to have my compasses adjusted.

Q. And what degree of error would you consider excessive?

A. Well, by excessive I would say six degrees. If I got over six degrees error, I would say that that was excessive.

Q. Do you mean with or without cargo?

A. Without cargo, because the compass would change after the cargo was loaded anyway, if it was adjusted before.

Q. Captain, assuming a steamship lying alongside the West Seattle Dock, which has a heading of West Northwest, took cross bearings of the Smith Tower and the water tank at Queen Anne Hill and checked the compasses; and then on a magnetic course from West Seattle Dock to Arden Salt Dock, Northeast by North $\frac{1}{2}$ North, she checked her compass while running that course; and then while lying alongside the Arden Salt Dock with a known heading of East Northeast she checked her compass on that heading with that known heading; and then from the Arden Salt Dock to Pier 40 she set a

(Testimony of Sylvester Glass.)

magnetic course West by North $\frac{1}{2}$ North and checked her compass while running that magnetic course; and that while alongside of Pier 40 on a known heading of North Northwest Magnetic she checked her compass; and then from Pier 40 to the American Can Dock, on a course approximately East by South Magnetic she again checked her compass on that course; and then heading from a known heading [2707] of the American Can Company's Dock of East Northeast she checked her compass while lying alongside; then on the course from the American Can Company's Dock to the Pacific Coast Coal bunkers of Southeast by East Magnetic she again checked her compass; and checked her compass while lying alongside of the Pacific Coast Coal bunkers on the known heading of West Southwest, and then checked her compass alongside the General Petroleum Corporation on a known heading of South Southeast, and checked her compass alongside Pier 2 on her heading of East Northeast, and that on these various checks and bearings no error was found in excess of two degrees error; as a master mariner state whether or not those compasses should have been compensated by a shore adjuster.

A. If I was master of that vessel I would not request it. I would not think it was necessary.

Q. Now, in your judgment, what would you say as to the condition of that compass as a result of those checks?

(Testimony of Sylvester Glass.)

A. I would say that any compass that does not show any more than two degrees deviation on it is in pretty good working order—in pretty good shape.

Q. What would you say—would you say that it was sufficient for the voyage to Alaska?

A. He has checked her on nearly all the courses that he would use going to Alaska, so that if she didn't check over two degrees error she was perfectly all right.

Q. Now, Captain, assuming that after these checks had been made that there was loaded on board, on the well deck of the "Denali", various cargo, such as trucks, boilers, [2708] rock crushers, and so forth, with magnetic tendencies of either iron or steel, in what way in your judgment could a competent mariner or master of that ship determine the effect of that cargo upon his compasses?

A. Well, if the sun is visible and is out, he would certainly take azimuths to determine his error.

Q. Assuming that after that cargo was loaded and while lying off West Point loading powder, the ship was swung on fourteen points from West Southwest to Northeast, and azimuths taken on each point, and there was no deviation from West Southwest to North exceeding half a degree, and that the extreme deviation on Northeast was two degrees, with the cargo aboard, in your judgment was the vessel's compasses in proper condition for the contemplated voyage to Alaska?

(Testimony of Sylvester Glass.)

A. Yes, sir.

Q. Now, Captain, if, during the course of the voyage, you determine your actual error, and that is known, what degree of error would you say in the compass or deviation would be dangerous?

A. I would not call any error of a compass dangerous as long as it was known to me and I applied it.

Q. Well, if you knew the error, taking azimuths on your standard compass, how do you determine the error on your steering compass?

A. By comparison to the standard compass; that is, I would go up there and take a bearing of the standard compass and note the heading of the standard compass at the time that the bearing is taken, and at the same time check and see what the steering compass reads at that time, [2709] and the difference between the two would give you the deviation of your steering compass.

Q. In what way do you compare the two compasses during the course of the voyage?

A. It is always the standing rule—the standing rule is on pretty clearly every vessel that I have been on that the compasses must be compared at least every two hours. That is, the officer on watch goes up to the standard compass and sees what the heading is, and then when he gets to the course that is desirable to steer by the standard compass he sings out through the speaking tube, “Right on; right on; right on”, until the man at the wheel

(Testimony of Sylvester Glass.)

gets what the course should be on the steering compass.

Q. Is there any universal practice as to which compass the ship is steered by?

A. There is only one compass that the ship is steered by, and that is the standard compass.

Q. Why is that?

A. The standard compass is the highest point on the vessel, and it is supposed to be away from all magnetic influences as much as it possibly can be, and it is made so that it is the most correct compass.

Q. Captain, in your experience is the difference of one-eighth to a quarter of a point between your standard compass and your steering compass unusual?

A. Unusual?

Q. Yes.

A. No, sir. No, sir.

Mr. Bogle: I think that is all. [2710]

Cross Examination

By Mr. Ryan:

Q. On what date were you last through Caamano Passage?

A. Sir?

Q. On what ship. On what ship were you last through Caamano Passage?

A. My last ship?

Q. Yes.

(Testimony of Sylvester Glass.)

A. The last ship was this April on the "Vigilant". I believe that was in April.

Q. In April.

A. Yes.

Q. Now, prior to May 19, 1935, when was the last time that you were through Caamano Passage?

A. Well, I would have to check that up. I cannot stay here and tell the dates offhanded.

Q. Can't you give us that within five years or ten years of the time that you were through there?

A. Well, I was running——

Q. (Interposing) Prior to May, 1935.

A. Yes. I was steady on the run from 1920 to 1926. I was running to Alaska at all times during that time, and for those six years I was going up there steady. Now, you just want the——

Q. (Interposing) So the nearest you can give us then is the year 1926, is that right?

A. Well, just the last two years I was running to Alaska. I was running the last two years to Alaska continuously.

Q. I mean before the stranding, in May, 1935, when was the last time that you were through Caamano Passage, and on [2711] what ship and on what date?

A. Well, I will have to get my book in order to tell you that. I cannot tell you that offhand.

Q. Where is your book?

(Testimony of Sylvester Glass.)

A. It is at home. It gives the list of the ships that I was on and where we were at all times.

Q. I wish you would bring the book into court next week. Will you do that?

A. Yes.

Q. Do you know the name of the ship that you were last on through Caamano Passage before this stranding in May, 1935?

A. Yes, sir. The last time I was through there I was on a Standard Oil tanker—the “Richmond”—I was pilot on her.

Q. Weren't you on a tug, or barge?

A. That was last April—this April, I mean.

Q. What was the name of that tug?

A. The “Vigilant”.

Q. You had the barge on a hawser tow, did you not?

A. Yes.

Q. How long a length of hawser was there between the tug and the barge?

A. I couldn't tell you the exact length. At that time going through there I believe that we shortened it up—probably 300 feet of hawser line.

Q. Now, don't guess at it. If you don't know how much it was, just say so.

A. Well, I don't know the exact amount of hawser.

Q. What is the usual length of hawser that you have between [2712] a tug and the barge, of that

(Testimony of Sylvester Glass.)

type, going through Hecate Straits and Caamano Passage?

A. Well, it all depends on the weather conditions.

Q. Well, you don't know. That is your answer, is that right?

A. It depends on the weather conditions——

Q. (Interposing) I see.

A. (Continuing) —as to how much hawser I would give her.

Q. Well, you never ran on this reef, did you, Captain?

A. No.

Q. On which the "Denali" stranded?

A. No, sir.

Q. Why didn't you run on that reef?

A. Because probably I didn't get in the same shape that this other man was.

Q. But you managed to keep clear of it all right, didn't you?

A. With the grace of the Lord, I suppose I did.

Q. How was it that you happened to keep clear?

A. Well, probably by having more experience and knowing the set of the currents and watching out for them.

Q. You think that you had more experience than Captain Obert, do you?

A. I might have, in that locality, yes, sir.

Q. Yes. You don't know anything about that particular point, do you, Captain?

(Testimony of Sylvester Glass.)

A. Which particular point?

Q. How much experience Captain Obert had going through that passage?

A. No. I don't know anything about Captain Obert whatsoever. [2713]

Q. Anyway, you went through there at night and you had no trouble at all?

A. Yes, sir.

Q. How many times did you go through there at night and have no trouble at all?

A. Oh, well, I cannot take any period—I cannot remember just exactly anything like that. I cannot enumerate it to you.

Q. Now, these arrows that you have put on this chart 2828, Petitioner's Exhibit 33, showing the direction of the tidal currents, they run practically west true from Dundas Island to Zayas, between those two islands, do they not?

A. Yes, sir.

Q. What is their direction magnetic?

A. Well, I don't know what the direction is. I am just saying that the direction of the current has always set me on top of Zayas Island.

Q. Please answer the question.

A. In the direction——

Q. (Interposing) Do you understand the question?

A. You asked me what the true direction of these arrows are, didn't you?

(Testimony of Sylvester Glass.)

Q. No, I didn't ask you anything of the sort. I asked you what the magnetic direction of those arrows is that you put on this chart, indicating the direction of the currents between Dundas Island and Zayas Island.

A. Well, the magnetic direction would be about West by South—West Southwest.

Q. I see. You don't know what the variation is up in that [2714] locality, is that it?

A. Sure. Here it is, right here, sir (indicating on chart).

Q. What is it? Look at that chart and read it.

A. Sir?

Q. What is it as shown on that chart?

A. It is 29 degrees eastward.

Q. Is that chart wrong in that respect, too?

A. In the variation?

Q. Yes.

A. No, sir.

Q. You say that the current sets just the same like that right straight west true from Dundas Island to Zayas at all stages of the tide—flood, ebb and all the tides, is that right?

A. That is what I have found in my experience running through there.

Q. Is there a tunnel underneath Zayas Island for that water to come through and go over like that?

A. Well, you may know more about that than I do.

(Testimony of Sylvester Glass.)

Q. Well, is there a tunnel for that water to come through there?

A. I don't know.

Q. Is it your idea that the water goes under Dundas Island and runs right over straight through?

A. Did you ever take any—

Q. (Interposing) Is that your idea, that the water goes under Zayas Island?

A. Oh, no. That is out of the question.

Q. I see.

Mr. Long: I think the witness should be allowed to [2715] finish his answer.

The Court: Objection overruled. Proceed.

Q. (By Mr. Ryan) Well, how do you account for this strange phenomena that at all stages of the flood and of the ebb tide the current sets practically exactly west true from this great big island right straight across to that little island?

A. It is probably caused by eddies, being caused by the tide, by hitting the land and curving around there.

Q. Well, if it hit the land it would go up north as it was coming in and it would go down south as it was coming out, wouldn't it?

A. I know the land there.

Q. Yes.

A. And if the flood tide would happen to come in—out of the sea here (indicating on chart) and hit Dundas Island, there might be such a thing as it would have a tendency to turn right around and

(Testimony of Sylvester Glass.)

form an eddy here (indicating) and wash back the other way.

Q. I see. Is that your idea as to how the flood tide comes in there?

A. I am not giving you any idea, Mr. Ryan. All I know is what I am telling you what I found in my experience on going through Caamano Passage.

Q. Now, let us take this last time that you went through Caamano Passage, prior to May, 1935, what was the stage of the tide, and what tide was it?

A. Well, you would have to get the log book off of the ship that I was on in order to find that out. I cannot remember the stage of the tide for that period of time. [2716]

Q. You don't remember?

A. No, sir.

Q. Do you remember what the height of the tide was?

A. No.

Q. Do you remember what the high water was at Port Simpson at that time?

A. No, sir.

Q. Or at Prince Rupert?

A. No, sir.

Q. Or at Ketchikan?

A. No, sir.

Q. Or at Barren Island?

A. No, sir.

Q. You don't pay any attention to tide tables, do you?

(Testimony of Sylvester Glass.)

A. Absolutely I do.

Q. Well, I thought you said that the tide tables were wrong up there.

A. I take the approximate time from the tide tables, but I certainly would not rely on them absolutely.

Q. What is the purpose of taking the time from the tide tables if you are not going to rely on them at all?

A. Well, you take the approximate time.

Q. So you do rely on the tide tables, don't you?

A. Just for the approximate time, that is all, sir.

Q. And you do rely on the currents and directions as computed on the diagram 2828 and on the British Admiralty Chart 1737, do you not?

A. Not altogether.

Q. But you do in large part?

A. No. I look at them for reference and then figure out [2717] what is going to happen by watching the ship—which way she sets.

Q. Now, all of this water along here (indicating on chart) is part of Dixon's Entrance, and it is one great big body of water, isn't it?

A. Yes, sir.

Q. And this shore formation is all flooded valleys on this west side of this range of mountains there, isn't it (indicating on chart)?

A. Yes, sir; I believe so.

Q. There is not any river of any consequence

(Testimony of Sylvester Glass.)

anywhere along there running in there through Portland Inlet or anywhere down the coast?

A. Well, you have got a long ways there from Portland Inlet.

Q. Well, you do not have any streams running in there of any consequence, do you?

A. No; no rivers.

Q. They are just flooded valleys with the peaks of the mountains left up there on the west side of the mountain range running up and down the coast, isn't that so?

A. Well, probably.

Q. Well, in a general way that is the topography up there, isn't it?

A. Well, yes.

Q. So that when the flood tide comes in through Dixon's Entrance, one-half of it goes around Rose Spit and down Hecate Straits, and the other half comes right up through all this great sea or single body of water with just some islands in it, isn't that so? [2718]

A. Yes, sir.

Q. And one of the smallest of those islands is Zayas Island—I mean of any consequence; isn't that right?

A. Yes, sir.

Q. And on this Dundas Island—the west side of it—the formation is fairly rocky, is it not—I mean in a general direction—it is much more nearly a straight line than, for instance, the eastern shore

(Testimony of Sylvester Glass.)
of Dundas?

A. Well, what do you mean by "straight"?
There are no outlying rocks there?

Q. No, no, I don't mean a few outlying rocks. I
mean the general formation of the coast on the west
shore of Dundas Island is almost a straight line,
isn't it?

A. Yes, sir.

The Court: At this time we will take an adjourn-
ment of this case until next Tuesday at ten o'clock
in the forenoon.

Mr. Ryan: May I ask if counsel still feels that
he will finish his case on Tuesday? I am asking that
in order to get my case in compact shape.

The Court: Probably it would be best for you to
arrange for the attendance of some of your wit-
nesses at that time.

Mr. Ryan: Yes, but I was wondering whether
counsel still felt that he would finish on Tuesday.

The Court: If counsel can state concerning that,
he may do so.

Mr. Bogle: The way that the examination has
been going along today, there is not any possibility
of [2719] finishing my part of the case, on Tuesday,
and I doubt whether I will be able to finish it on
Wednesday. I have five more witnesses to call.

Mr. Summers: If counsel could indicate the num-
ber of witnesses that he intends to call we might
make our own estimate—that is, if he would tell us

(Testimony of Sylvester Glass.)

the number of additional witnesses he intends to put on the stand.

Mr. Bogle: Well, we will be all day Tuesday, and part of Wednesday.

The Court: All right.

(Whereupon an adjournment was taken at 4:30 o'clock P. M., November 12, 1937, to 10:00 o'clock A. M., November 16, 1937.) [2720]

November 16, 1937,
10:10 o'clock A. M.

Court convened pursuant to adjournment;
All parties present.

The Court: Are there any other ex parte matters to come before the Court? If not, you may proceed with the case on trial. Was there a witness on the stand whose testimony has not been completed?

Mr. Bogle: Yes, Your Honor. Captain Glass.

The Court: Will you recall that witness?

Mr. Bogle: Yes. Captain Glass, come forward.

The Court: Resume the stand, Captain.

SYLVESTER GLASS,

resumed the stand for further examination.

Further Cross Examination

By Mr. Ryan:

Q. For what ports on the west side of Prince Wales Island were you bound on your voyages that you made up through Caamano Passage?

(Testimony of Sylvester Glass.)

A. Waterfall, Klawack, Craig, Heideberg, and then we used to go up through Chatham Straits to all the salteries.

Q. Now, you were up there two seasons, you say?

A. Yes, sir.

Q. And the port that you would leave would be what—before you went through Brown's Passage?

A. I used to come up from Seattle.

Q. And then you would go up and turn west through Brown's Passage? [2721]

A. Yes, sir.

Q. And then where would you go?

A. Go through Skookenchuck.

Q. You would go in through Caamano Passage?

A. Yes, sir.

Q. And then would turn westward to Prince Wales Island?

A. A little to the westward—to the northwards and to the westwards.

Q. I show you this chart, Claimants' Exhibit A-10, 8102, and I will ask you how you would go on the voyages after you turned westward through Brown's Passage.

A. I would go through Brown's Passage, come up here (indicating) and go through Caamano Passage, go right up, and inside.

Q. You would turn west?

A. Yes, sir.

Q. And run how far to what port?

(Testimony of Sylvester Glass.)

A. The first port that we generally used to run to would be Waterfall. I don't know whether you can pick it up on this chart or not.

Q. Prince of Wales Island is on the extreme left hand side of this chart, isn't it?

A. Yes, sir.

Q. So Waterfall would be off of this chart to the westward, wouldn't it?

A. Yes, sir. It is up further than that—further over than that. It does not show on there.

Mr. Ryan: Now, I would like to have Your Honor notice that. He would come up this way, right through here, and then come up here and then go over here [2722] (indicating on chart).

Q. (By Mr. Ryan) It is much longer for you to go to your ports on the west coast of Prince of Wales Island, isn't it, going that way than coming straight west from Brown's Passage over?

A. It is longer, but it is not safer.

Q. So you went over through Caamano Passage from Brown's Passage because it was safer?

A. Yes, sir.

Q. You think it is safer to go up that way than it is to go right straight through Dixon's Entrance here (indicating on chart) right straight westward until you get over to the west side of Prince of Wales Island?

A. I do.

Q. Whether it is night time or not?

A. Yes, sir, as long as it is clear.

(Testimony of Sylvester Glass.)

Q. How many extra miles did you travel in making such a voyage as you have described—that is, you come west through Brown's Passage, then you head way up north, or a little to the eastward and north, and then you head back west again after you get up near Cape Fox or Tree Point?

A. About ten miles.

Q. It is about thirty miles or more, isn't it?

A. No, sir, it is not. It is about ten miles.

Q. Well, will you look at the chart and show me how you make that any less than thirty miles?

A. The only distance that you make going through Caamano Passage is the angle that you make up here to here (indicating on chart), which I would have to come up anyway. [2723] I come up around about three miles around the island here and——

Q. (Interposing) Just a minute. I will hand you another chart.

Mr. Long: Go ahead and finish your answer.

Q. (By Mr. Ryan) Lay down on this clean new chart which I show you——

The Court: (Interposing) Let him finish his answer.

Mr. Long: What island is that that you were pointing to when you said, "around the island here"?

The Witness: Prince Lebo Island.

Mr. Long: Mention the geographical places as you go along, Captain.

(Testimony of Sylvester Glass.)

Mr. Ryan: Please, now, Mr. Long——

The Court: (Interposing) Just make your objection, Mr. Long, and no comments.

Mr. Ryan: I think there should not be any interruptions. In fairness to my cross examination there should not be any interruption and designating the places that he is pointing to.

The Court: Proceed.

The Witness: You go up through Caamano Passage around Zayas Island out a distance of about a mile and a half and steer right across for Cape Chacon.

Q. (By Mr. Ryan) What course would that be on?

A. I would have to get a pair of parallel rulers to lay it out.

The Court: Approximately. Approximate it. That will do. [2724]

A. Approximately it would be around West Northwest, or something like that.

Q. (By Mr. Ryan) I asked you to lay down on this new Chart 8102 which I will ask to have marked as the next number for identification on behalf of the claimants.

The Court: That will be Claimants' A-14 for identification.

(Map marked for identification as Claimants' Exhibit A-14.)

Q. (By Mr. Ryan) The course that you say that you followed in proceeding on all these voyages

(Testimony of Sylvester Glass.)

that you made to the ports on the west coast of Prince of Wales Island, and you can lay it down over here on the table, if you wish.

The Court: But be as prompt as you can, so as to expedite the proceedings.

A. If it is a matter of questioning my integrity there is absolute proof as to the way that I went on the log books that are on the ships at the present time. They can be brought up here and they will verify that I went through there during all those voyages that I was on on those ships. The log books are on board the "Culburria" and the "Sea Breeze".

Mr. Ryan: I ask that the answer be stricken as not responsive.

The Court: It is so ordered.

Mr. Long: I want to object to all of this as being wholly immaterial, and being purely a collateral matter, and if there is any attempt to prove that this witness did not go through there, it can be done by other means. [2725]

The Court: The objection is overruled.

Q. (By Mr. Ryan) Come over here, and lay it down on the chart.

The Court: The Court will allow you ten minutes, Mr. Ryan, for this method of examination, after which you may resume oral examination.

Q. (By Mr. Ryan) Just lay it down on the chart, and I wish you would hurry, as we are very short of time.

(Testimony of Sylvester Glass.)

(Mr. Ryan and the witness go over to chart, Claimants' Exhibit A-14 on table)

A. I want to have some parallel rulers.

Q. We haven't got any parallel rulers this morning. Just tell us on the chart. Lay it out on the chart.

A. I would come out here (indicating on Claimants' Exhibit A-14 for identification).

Q. Just draw a line showing the course you took.

A. I used to come out here a distance of about two and a half or three miles off of Prince Lebo, and then go up through Caamano Passage here (indicating), and after you got to this point of Caamano Passage abeam (indicating), we generally used to run ten miles for what we used to call "position" and then straighten it out here for Barren Island (indicating) to pick it up in case of a fog or getting caught up there, and then steering right down for position off of Cape Chacon and inside of Nunez Rocks, and then followed this right along here (indicating) and then go up (indicating).

Mr. Ryan: The witness has drawn on the chart a line in pencil extending through Brown's Passage and up Caamano Passage, and past Barren Island and Cape Chacon, [2726] and up on the west side of Prince of Wales Island.

The Court: By free hand?

Mr. Ryan: By free hand, yes, Your Honor.

(Testimony of Sylvester Glass.)

Q. (By Mr. Ryan) Is that approximately your usual course through Caamano Passage?

A. Well, it is approximately that as long as I can see, surely.

Q. That is, you would go through mid-channel?

A. Yes, sir.

Q. You would not favor the west coast of Dundas Island?

A. Not necessarily. As long as my vessel looked to be in mid-channel I thought it would be safe to go through there.

Q. There is much less current over on the west coast of Dundas Island, isn't there? In fact, it is inappreciable, isn't that right?

A. I don't know whether it is inappreciable or not, but as I said before in all my experiences I found a current through Caamano Passage.

Q. Well, isn't there less current right near Dundas Island than anywhere else?

A. I don't know about that.

Q. You have never been over there, is that it?

A. No, sir. I always—I used always to go through mid-channel. That is always my usual course.

Q. And you were not expecting much of a westerly current when you were going through?

A. Well, I am watching my ship, and I am piloting, and if she is setting her over I naturally would draw back.

(Testimony of Sylvester Glass.)

Q. On a dark night would you pursue that course that you have [2727] laid down there?

A. As long as I saw the land, I would.

Q. Suppose you didn't see Prince Lebo Island, then what would you do?

A. I wouldn't go through there.

Q. You testified that you went through there on some dark nights.

A. Yes, sir. As long as I see the land I will go through any place in Alaska, as long as I see the land.

Q. Lay down a course that you would pursue if it was in the night time.

A. It would probably be the same course as I have laid down there at the present time.

Q. What course would you generally pursue going through Brown's Passage until you began to make the turn up through Caamano Passage?

A. I would try to get her in a position of two and a half or three miles off of Prince Lebo Island and then start up.

Q. Wouldn't you set a compass course or a magnetic course?

A. I would give a course for the quartermaster to steer by, and then watch the ship.

Q. What magnetic course would you give going through Brown's Passage to the point where you turn up to go through Caamano Passage?

A. I cannot remember all of those courses.

(Testimony of Sylvester Glass.)

Q. Well, what course would you use going through Caamano Passage?

A. I would not use any course. I would con the ship. I would be piloting the ship. [2728]

Q. What landmark is there on Zayas Island on which you could take a bearing?

A. The point of Zayas Island—that would be about—the southeast point here is very prominent (indicating on chart).

Q. That would be the southern end of Zayas Island?

A. Yes, sir. That is very prominent. It cuts off at a very sharp angle. It looks as though it is a point with nothing else behind it.

Q. When you would sight that landmark and you could recognize it and take a bearing on it, then you would use that?

A. Not necessarily. I would keep watch on Dundas Island at the same time to see how the ship was laying?

Q. What landmark is a recognized landmark on Dundas Island?

A. There is no recognized landmark. This chart—you have got to realize that when you are going through there the actual way that we look to see the land is altogether different than it is here on this chart. For instance, on this chart—up there it does not show any of this broken line that is here (indicating). Dundas Island, when you come up on this track is practically a straight line.

(Testimony of Sylvester Glass.)

Q. The west side of Dundas Island is practically a straight line, is that right?

A. Yes, sir. Of course, there are these outlying dangers here (indicating on chart), but as long as you are a mile off of there you are clear of everything for that matter.

Q. How much longer is that line or course that you have [2729] drawn there as the one that you pursued in excess of the line which would go from Brown's Passage straight across through Dixon's Entrance between Rose Spit and Celestial Reef and up here to Cape Muson or Cape Chacon?

A. Well, you don't go up—

Q. (Interposing) The question is, what is the excess distance involved there?

A. I cannot tell you by looking at it.

Q. Can you not look at the chart and tell me?

A. No, but I can measure it for you, but I wish to state in my answer that—

Q. (Interposing) Then measure it, will you?

Mr. Long: I submit that the witness should be allowed to finish his answer.

The Court: Yes, finish your answer if you have not finished it.

A. I wish to state in my answer, that in all my experience or anybody's running up there—running to Alaska—I think anybody would be very foolish to start going across Dixon's Entrance from Brown's Passage into the entrance there to the west coast of Prince of Wales Island inside. In the first

(Testimony of Sylvester Glass.)

place the current and everything like that is unknown and you have absolutely nothing here to pick yourself up by on all these outlying dangers that are not marked here.

Q. Aren't there lights here on Rose Spit, and on Overfall Shoal, and Wiah Point, and Masset Harbor and Klashwin Point on the north coast of Graham Island?

A. Well, there are——

Q. (Interposing) Just answer that question by yes or no. [2730]

A. There are lights there, but I would not use them.

Q. There are aids to navigation there, are there not?

A. There are lights there, but I would not use them.

Q. There is no danger in your opinion in going through Brown's Passage and then going between Rose Spit and Celestial Reef westward to the main fairway of Dixon's Entrance?

A. No danger?

Q. Or do you think that it is dangerous?

A. Yes, sir, it is dangerous.

Q. You think that the course right through Brown's Passage to the west, right straight to the fairway of Dixon's Entrance is dangerous?

A. Yes, sir.

Q. Take the stand again, please. When does the tidal stream or current turn between Dundas Is-

(Testimony of Sylvester Glass.)

land and Cape Fox with reference to, say, Prince Rupert?

A. Well, all the way——

Q. (Interposing) With reference to the time of high water at Prince Rupert.

A. All the way from three to five hours.

Q. Do you know what the current or the tidal stream between Dundas Island and Cape Fox was on the morning of May 19, 1935, at 2:44 A. M.?

A. I cannot remember that far back. I can tell you if I look at the current table or at the tide table.

Q. Oh, you take your information from the current table, or from the tide table, is that right?

A. For the approximate time, yes, sir.

Q. Have you any other experience or source that you can take [2731] your information from?

A. Well, the current tables. It also shows it to you at the bottom of the chart.

Q. Now, before we have been talking about tide tables. What do the tide tables show?

A. They show the time of the high and low water.

Q. And what do the current tables show?

A. They show you the velocity and the direction of the currents.

Q. Now, the current tables are accurate, are they not, the Pacific Coast Current Tables, North American and Philippine Islands, for the year 1935?

(Testimony of Sylvester Glass.)

A. Approximately, yes, sir.

Q. It is the tide tables that you say are wrong, is that right?

A. All these publications, as I say, the time on them is approximate.

Q. Well, tell me any place in this current Pacific Current Table that is wrong—that is, in the vicinity of Caamano Passage or Dixon's Entrance. Point it out to me.

A. You are trying to make me say that they are wrong. I am telling you that those times are approximate, and I can prove to you that I can give you any position in those current tables and also on the chart, and in the Canadian Tide Tables for the same place, and there will be a difference of as much as an hour between these three books.

Q. Do you say that these Pacific Current Tables issued in the year 1935 by the United States Department of Commerce are wrong?

A. I say that they are approximate. [2732]

Q. Do you say that they are wrong?

A. No, sir; I say that they are approximate.

Q. Do you say that the American Tide Tables issued by the United States Government are wrong in any respect with reference to Dixon's Entrance or Caamano Passage?

A. I say that the time stated in them is approximate. [2733]

Q. (By Mr. Ryan) Do you say they are wrong in any respect?

(Testimony of Sylvester Glass.)

A. I won't say they are wrong. I say the time is approximate.

Q. When are they right and when are they wrong?

A. If I was in that position that these current tables are given at the same time, under the same weather conditions, and everything else, they probably would coincide perfectly, but any other time they do not coincide, as they only give approximate time.

Q. So that the Pacific Coast current tables for the year 1935 and the American tide tables for the year 1935 are correct, in your opinion, excepting in instances where there is an extraordinary and unpredicted height of tide, or in instances where there have been strong winds or weather conditions preceding the time involved, isn't that right?

A. Well——

Q. (Interposing) Answer yes or no to that, please.

A. I cannot answer that. If you allow me to answer it in my own way——

Q. (Interposing) Answer it yes or no, and then explain.

A. No; I wouldn't say they are right. In my case I would never rely absolutely on either the current or the tide tables. I would naturally look at them for the approximate time of any change of tide, or the strength and direction of the current.

Q. You testified on direct examination that the

(Testimony of Sylvester Glass.)

tidal current was irregular because the height of tide might not be the same?

A. Surely.

Q. As shown in the predicted tables? [2734]

A. Yes.

Q. And that the weather conditions or wind conditions might be stronger?

A. They would have an effect.

Q. Those are the reasons you gave?

A. Yes.

Q. Those are the causes of irregularities or abnormalities?

A. Yes.

Q. If those did not exist, then you would rely on the Pacific Coast current tables and the American tide tables, wouldn't you, in Caamano Passage?

A. Yes, sir. If I knew what the conditions were at the time that these observations were made, and I was there under the same conditions, then I would rely on those current tables, absolutely.

Q. Just to take a theoretical case; suppose in a given situation the actual tide that occurred would be exactly the same height as predicted in the tide tables?

A. Yes, sir.

Q. And suppose further that the wind conditions for some time before the stranding were very mild, then you know of no conditions which could cause irregularities such that you would disregard the

(Testimony of Sylvester Glass.)

Pacific Coast current tables and American tide tables, isn't that so?

A. You say if there weren't any unusual conditions?

Q. Yes.

A. I probably would.

Q. All right. When does the tidal stream or current turn between Rose Spit and Over Falls Shoal with reference, say, to the time of high water on shore, or at Prince [2735] Rupert?

A. I couldn't tell you, because my experience with Rose Spit has been very limited. I am not acquainted around Rose Spit. I have never had occasion to go that way.

Q. What is the strength of the flood current in the southern entrance of Hudson Bay Passage, that is, of the tidal stream?

A. In Hudson Bay Passage?

Q. Yes, sir.

A. We never use Hudson Bay Passage.

Q. At the southern entrance.

A. I wouldn't know, because we never use that; nobody ever uses that passage.

Q. What is the strength of the ebb tide in the southern entrance of Hudson Bay Passage?

A. I don't know, as I never used that passage. Nobody else does.

Q. What is the strength of the flood tide in Brown Passage?

A. The flood?

(Testimony of Sylvester Glass.)

Q. Yes.

A. The flood will run there from one to three miles an hour.

Q. What is the strength of the ebb tide in Brown Passage, if you know?

A. From three to five knots an hour.

Q. Have you ever stopped your engines there, in Brown Passage?

A. No, sir.

Q. Have you ever made any observations there, other than merely to travel through with your ship, piloting, as you have [2736] described it?

A. Yes, sir; I have made observations.

Q. All right; have you stopped to make any observations?

A. No, sir.

Q. You were piloting through there, were you not?

A. Yes, sir.

Q. Now, if you were going out through Brown Passage, and then going up through Caamano Passage, and you couldn't see Prince Lebo Island, and you couldn't see this landmark that you have pointed out on Zayas Island, that is, this southern end, sufficiently clearly to take a bearing on it, and it was a dark night, what would you do?

A. I would run as far as I deemed it safe to go, and then stop and not go through.

Q. That is, you would run by dead reckoning, or your compass course, as far as you could, until you

(Testimony of Sylvester Glass.)

could pick up a recognized landmark, wouldn't you?

A. I would run by time.

Q. That is right; time and a set compass course?

A. Oh, absolutely.

Q. Until you could see this landmark on Zayas Island, that is, the southern end, sufficiently clear to enable you to take a bearing on it, isn't that correct?

A. I would run as long as I thought it was safe enough to run to pick it up. If I couldn't pick it up in a given time, or I thought it was unsafe, I would stop and turn around, and wouldn't go through.

Q. You would either stop or continue on a regular compass course or dead reckoning course, isn't that correct?

A. May I explain that?—That I would only use the course [2737] for the quartermaster to steer by. He has to have something to steer by, naturally, to keep the ship on a straight course. But I would be keeping on lookout and conning the vessel by the sighted land when I would see it.

Q. When you went through Caamano Passage did you go through on a set compass course or not?

A. No, sir; I used to haul her quite often, one way or the other.

Q. You wouldn't take bearings on any lights or things like that to set your course so you would have a dead reckoning course, is that right?

(Testimony of Sylvester Glass.)

A. Well, there wouldn't be any dead reckoning course. I would know what the course would be by laying it off on the chart, but that doesn't signify that I would use that course.

Q. Don't you know that no chart is of any possible use unless you know your exact compass direction at the time?

A. Well, there is lots of places in Alaska that we know the exact compass direction.

Q. Answer that yes or no, and then explain if you wish. Read the question. (Last question read.)

Mr. Ryan: Then read his answer. (Last answer read.)

Q. (By Mr. Ryan) I will ask you again, when you were going through Caamano Passage and were trying to use a chart to illustrate your position as you were going through there, isn't it a fact that the chart would be of no use to you whatever unless you knew your exact compass direction or magnetic heading so that you could lay it down on the chart and see which way to go on the chart? [2738]

A. Why, surely.

Q. So you did have to rely on your compass when you were going through a passage like that, and you would have to if the chart is to be of any use to you at all, isn't that so?

A. No, sir.

Q. Now tell me why not.

A. In order to explain it to you; in going through any narrow passage in Alaska the general

(Testimony of Sylvester Glass.)

custom here is that we put a vessel on an initial course, and now suppose——

Q. (Interposing) That is, going up through Brown Passage. Let us make it specific.

A. Yes, sir; or any place.

Mr. Long: Let him answer the question.

The Court: The objection is overruled.

The Witness: Supposing I left Brown Passage on a course going up to a position off of Point Lebo Island, two and one-half miles, it would be around North of East—this is only approximately, I don't know—I would give the quartermaster that course and he would put her on that course to steer by. If I sighted the land any time after that, and if I thought she was too close to Dundas Island, or too close to Zayas Island, I would tell him to right a half point, or left a half point, or whatever I thought would be necessary for the safety of the vessel.

Q. But you would hang onto your dead reckoning position until you could get some landmark, some recognized landmark that you could take a bearing off, so you could begin this piloting that you talk about?

A. Surely. You would have to. [2739]

The Court: May I interrupt you, Mr. Ryan?

Mr. Ryan: Surely.

The Court: I want to ask this witness a question there. Do you as a navigating officer, or do you not, in these Alaskan waters that you are talking about

(Testimony of Sylvester Glass.)

here, prefer to navigate by the aid of landmarks, either between islands or in the sight of islands, so that you can keep land in view, rather than to get out in clear water, that looks clear on the chart?

The Witness: We would.

The Court: That looks clear on the chart on the surface?

The Witness: Yes, sir.

The Court: In these Alaskan waters?

The Witness: Yes, sir. As a matter of safety, in my experience, the closer that you keep to land the more safety there would be, because there is lots of ways of ascertaining your position when you are close to land.

The Court: Is that true with any degree of peculiarity to these Alaskan waters?

The Witness: Yes, sir, it is. I do not believe there is any other body of water that we have in the United States, or to my knowledge in the world, where the peculiar part of the navigation of it is all by itself, that you couldn't see any place else. We depend on echoes an awful lot, getting an echo from the land to get our distance off. If you are too far off and lose sight of that land you don't know where you are.

The Court: Do you get echoes off Caamano Passage?

The Witness: Yes, sir; you always get an echo off [2740] Dundas Island.

The Court: That is all I wish to interrupt for.

(Testimony of Sylvester Glass.)

Q. (By Mr. Ryan) Now, you tell me any peculiarity in navigating through Caamano Passage that does not exist going from here, say, to Vancouver, up Puget Sound, or on Long Island Sound, or anywhere else?

A. I can tell you one peculiarity.

Q. In that particular area.

A. In that particular place. It is a funny thing, but no matter in which position you seem to lay as soon as you have the entrance of Caamano Passage clear it always seems that the vessel looks always in mid-channel.

Q. And yet that is a dangerous position to be in, isn't it, because there is a reef there?

A. Well, it is dangerous in a way, but I say, if your vessel looks to be in mid-channel that is all you can do.

Q. So that kind of piloting is dangerous if you are going up through Caamano Passage, isn't it?

A. It is the only kind that you can use going up there.

Q. You just testified that if it were a dark night and you were going up from Brown Passage up through Caamano Passage, you would steer a compass course for a known time, and maintain your dead reckoning position until you could pick up a landmark that you knew of on Zayas Island and take a bearing on it?

A. Yes, sir.

(Testimony of Sylvester Glass.)

The Court: Let the spectators not show any signs of approving or disapproving what is said by the witness, or by counsel or the Court.

Q. What is the set and drift of the current, that is, its [2741] force and direction, at a point, we will say, three miles West true from Zayas Island, say one hour after high water?

A. West true?

Q. After Port Simpson.

A. West true?

Q. Yes.

A. Three miles?

Q. Yes.

A. That would put you outside of Zayas Island, wouldn't it, counsel?

Q. Do you understand the question?

A. You asked me what the current was out there?

Q. Yes.

A. I don't know. I never have had any occasion to be outside of Zayas Island.

Q. What is the set and drift, that is, the force and direction of the tidal current, at a point five miles South true from Prince Lebo Island, at, say, one hour after high water at Port Simpson or Prince Rupert.

A. One hour after, if there wouldn't be too much wind outside, backing the water up, the current or the set of the tide would be running out of Brown Passage.

(Testimony of Sylvester Glass.)

Q. Do you know what that set and drift of the current at that point was on the morning of May 19, 1935, say at about 2:00 a.m.?

A. I wasn't there. I couldn't tell you what it was. I could tell you approximately the time of it by comparing the books, probably, figuring it up.

Q. What books? [2742]

A. The current table or the——

Q. Or the tide tables?

A. Yes.

Q. How about looking at the current table or diagram on Hydrographic Office Chart No. 2828, or British Admiralty Chart No. 1737?

A. For the approximate time it would be the same.

Q. That would show it to you, wouldn't it?

A. The approximate time.

Q. Unless there was an unusually strong wind before that, or an unusually high tide?

A. High tide, yes.

Q. Beyond the predicted tide?

A. Yes.

Q. Do you know the set and drift, or force and direction of the tidal current at a point nine miles West Southwest true, from Triple Island Light, at say, one hour after high water at Port Simpson or Prince Rupert?

A. No. Any of these questions it is almost impossible to answer, me sitting here and telling you right offhand what it would be.

(Testimony of Sylvester Glass.)

Q. Where would you get that information if you were seeking it?

A. The same way I told you before. If I want to get the approximate time I would look into the publications that are published for that purpose.

Q. Would you look at the Pacific Coast current tables?

A. Or the Canadian tide table, or the chart.

Q. Or the American tide table?

A. Yes. [2743]

Q. Or Chart No. 2828?

A. Yes.

Q. The current diagram?

A. Yes, sir.

Q. What are the differences between the American tide tables and the Canadian tide tables?

A. The differences?

Q. Yes.

A. In some localities there is as much as an hour's difference.

Q. Anywhere near Caamano Passage or Dixon's Entrance?

A. Well, there is a difference there. I don't know exactly the time, but there is a difference.

Q. What is the difference?

A. Well, I will have to look at that. In these questions you are asking me to remember too much.

Q. Which is correct, the American tide table or the Canadian tide table?

(Testimony of Sylvester Glass.)

A. In my opinion, neither one is absolutely correct.

Q. Is there any difference in the base level used by the American tide tables, as compared with the base level used by the Canadian tide tables?

A. Probably not, because the American tables are taken from the Canadian tables.

Q. At least you do not know of any difference, isn't that correct?

A. No.

Q. You do not know of any?

A. No.

Q. What charts and tables do you use when you are navigating [2744] through Caamano Passage in the night time, or at any other time?

A. Well, personally, I do not use any charts.

Q. You never use charts?

A. Not going through a place like that, no. I depend upon my local knowledge.

Q. I see. You never use charts at all?

A. Oh, absolutely.

Q. Now, do you understand the question or not?

A. Yes; I understood it.

Q. Then please answer it.

A. You are giving that locality——

Q. (Interposing) I am giving you Dixon's Entrance and Caamano Paassage, that vicinity around there. What charts and tables, if any, do you use when you are piloting or navigating up through Caamano Passage on a dark night, if any?

(Testimony of Sylvester Glass.)

A. Well, I would use the large scale chart, if I used any.

Q. Which chart is that?

A. I don't know the number of it. It is the large scale chart there, taking in part of Dixon Entrance, Brown Passage, and Edye Passage.

Q. Is that No. 8102?

A. I would have to look at it to give you the number. I do not know the numbers of those charts. We do not refer to them that way.

Q. Why would you use the charts in going up through Caamano Passage on a dark night?

A. To get an initial course, to find out what the initial course would be to start the vessel on. [2745]

Q. Then suppose you got up there and got right in the Passage, or right near it, what would you do?—And you didn't pick up this recognized landmark that you speak of?

A. I wouldn't go through.

Q. How much did you allow for current in setting your course from Brown Passage up through Caamano Passage; I mean how much do you usually allow when you set your course to go up through there, disregarding any unusual thing that might have happened afterwards, but I mean when you went up there and exercised your best judgment in setting your course from Brown Passage up through Caamano Passage, what allowance did you make for current?

(Testimony of Sylvester Glass.)

A. On the initial course that I first put the vessel on, I didn't use to make any allowance.

Q. Well, that is a rather strange way of navigating a ship, isn't it?

A. No, sir.

Q. Now to make any allowance if you expected any current at all?

A. No; it is not. I would watch the vessel and see which way she was drifting, and then haul her accordingly.

Q. It might be either way, either west or east?

A. In that locality it probably would. You have Hudson Bay Passage there to go by, a strong tide running out of there.

Q. I thought the current always set to the westward in Caamano Passage, so far as your opinion was concerned.

A. Well, you are not up to Caamano Passage, and you told me from Brown Passage to the Passage. After you get into Caamano Passage, where it is shut out by Dundas Island, [2746] In my experience the current has always set to the westward with considerable strength.

Q. In navigating a ship you would at least know whether you were in flood tide or ebb tide, wouldn't you?

A. Yes, sir.

Q. There is no question about you knowing that?

A. No.

(Testimony of Sylvester Glass.)

Q. Then with that information what allowance would you make in setting the course from Brown Passage up to Caamano Passage?

A. On my first course I wouldn't make any allowance.

Q. You would not?

A. No.

Q. Suppose it were a dark night and you did that, and then you just kept steaming along, you would run right on the rocks, wouldn't you?

A. Well, I don't know—I have been navigating there for 27 years and haven't run on the rocks yet.

Q. How would you ever know on a dark night whether you had been set to the westward or to the eastward, if you didn't make any allowance for current, and you knew there was a current in there?

A. If I couldn't see the land I wouldn't attempt to go through there.

Q. Now, as you proceeded up further 00 first, you set this course from Brown Passage up to Caamano Passage, and then you say after a while you would set another course, or make some allowance for current in this second change, but you wouldn't do it until you had picked up this landmark? [2747]

A. Yes.

Q. On this southern end of Zayas Island, is that right?

(Testimony of Sylvester Glass.)

A. Coming up from Brown Passage, you must pick up the southern end of Dundas Island first.

Q. Well, on a dark night, where there is some haze, it would be pretty dangerous navigation doing a thing like that, wouldn't it, that is, just going ahead full speed, hoping to pick up something that had no light on it?

A. Well, we do it all the time. I cannot explain it to you. [2748]

Q. Now, then, when you would come up there and you picked up this landmark on Zayas Island sufficiently clear so that you could take a bow and beam bearing on the southern end of that island, that is the first time that you would make any allowance for current, from then on, is that right—from that time on?

A. No, sir. I would start making my allowance for current after I got my departure off of Prince Lebo Island.

Q. Now, you have got something else. Prince Lebo Island is a flat top island, isn't it—kind of a mesa as they say down south?

A. It is a flat top island, yes, but you can always distinguish it on the darkest night on account of having the opening of the passage. When you get abeam there you pretty near know that you have got Prince Lebo Island abeam.

Q. Tell me of any landmark that you take on Prince Lebo Island as a bearing.

(Testimony of Sylvester Glass.)

A. That is pretty hard for me to tell you that.

Q. Well, do you understand the question?

A. Yes, sir, I do.

Q. Then answer it. There is no recognized landmark on Prince Lebo Island, isn't that right?

A. The whole island is recognizable. I can tell Prince Lebo Island on the darkest night?

Q. Can you tell it on the haziest night?

A. Approximately, yes. As long as I can see that land on that side I can be absolutely sure of my position, yes, sir.

Q. Suppose you could not see Prince Lebo Island, then what? [2749]

A. I would not dare to go up there unless I could see it.

Q. Oh, you are a day time navigator, is that right?

A. I object to that. I have been running up there for twenty-seven years, and I have been pretty successful, and I can navigate at night just as well as in the day time or at any other time.

Q. You do not mean to say that it is the usual practice for large steamers to stop in the middle of the night simply because they cannot see some land, do you?

A. I have been master of large passenger ships running up there, and I have stopped, yes, sir.

Q. Have you known one to stop off of Caamano Passage? If so, give me the name of the ship.

(Testimony of Sylvester Glass.)

A. I never had occasion to stop there. I could always go through.

Q. Well, the entrance to the fairway there is two and a half miles wide, isn't it?

A. Probably, yes.

Q. And there is not any danger in the whole of Caamano Passage except on that one reef on which the "Denali" stranded, isn't that right?

A. Yes, sir.

Q. Now, isn't it a well known fact among mariners that the flood tidal stream coming through Dixon's Entrance separates into two parts; that the stronger part turns to the right or around to the south—around Rose Spit, and the weaker half proceeds up past Dundas Island?

A. That is what the book says.

Q. Well, isn't that a well known fact among mariners?

A. Not in my experience it isn't. [2750]

Q. What is your experience that contradicts these government books?

A. In my own natural experience I have found the tide running in Caamano Passage from three to five miles an hour.

Q. That was under these irregular conditions that you have described, isn't that right?

A. Well, those are the conditions that I happened to be going through there under at the time.

Q. Have you ever reported any such observation by you to the United States Government

(Testimony of Sylvester Glass.)

through its Hydrographic Office or the Steamboat Inspection Service?

A. If you will look in the Coast Pilot——

Q. (Interposing) I say, have you ever reported it?

A. Yes, sir.

Q. In writing?

A. Yes, sir, in writing, and also in person.

Q. All right. When did you make such a report?

A. Well, if you will look in the Coast Pilot you will see my name, where I have written reports to the Hydrographic Office here and delivered them in person.

Q. Give me the date when you did that.

A. I cannot give you the date. I cannot remember all these dates. These things happened years ago.

Q. What?

A. These things happened years ago.

Q. What was the date, about?

A. I cannot tell you that.

Q. Well, give me your best recollection.

A. I don't know. I went up there and I seen the Commanding [2751] officer of the Hydrographic Office up here and I told him about these things, and at one time they put my name——

Q. (Interposing) You mean Commander Ingraham?

A. No. This was years ago. Captain Dietrich was up there at that time. I believe that was his name.

(Testimony of Sylvester Glass.)

Q. How many years ago was that?

A. Probably eight or ten years ago. I cannot remember these dates. They are so far back. I have got other things to remember than these dates.

Q. Give us the approximate number of years back.

A. I cannot even give you the approximate number of years back it was. I know that the record—that I have been up there, and that the record is up there.

Q. But you don't know the date?

A. No.

Q. And you cannot give me the nearest year, or within two or three years?

A. No, sir.

Q. And if there is not any such report on file you cannot explain its absence, is that right?

A. Well, my name was in the Coast Pilot—I got my name in there where I made these reports.

Q. Well, the Coast Pilot was issued then on the basis of those reports, was it?

A. Exactly. I told them about the unusual current encountered there, and at the same time I gave them some other data regarding Kadiak Island, and it is in the book, and it shows there that the report was made by me. [2752]

Q. Is it your testimony then that those Coast Pilots are wrong in that they accepted your information and put it in the book, or that they disregarded your information and put in other facts?

(Testimony of Sylvester Glass.)

A. The Coast Pilot—

Q. (Interposing) Just answer that question. Which is it?

A. I am trying to answer it.

Q. Which is it?

A. Well, as far as the Hydrographic Office is concerned they will take the statement of any man that has been running in any locality and who finds any unusual conditions up there and makes his report—they will publish them to the effect that that man has made that sort of a report. Then anybody reading that can go to work and use that information or not, just as they wish.

Q. Please answer my question.

Mr. Long: He has answered the question, if Your Honor please, and I object to that.

The Court: The objection is overruled. I will state, however, that the witness is doing pretty well. Proceed.

Q. (By Mr. Ryan) Do you understand the question?

A. Yes, sir.

Mr. Ryan: Read the question to the witness.

The Witness: Yes, sir, I understand the question.

The Court: I think it will save a lot of time if you will ask him another question, but in shorter form if you can.

Mr. Ryan: All right.

(Testimony of Sylvester Glass.)

Q. (By Mr. Ryan) Do the Coast Pilots correctly state the [2753] facts as you understand them with reference to the turn of the tidal streams and currents in Dixon's Entrance and in the vicinity of Caamano Passage, or not?

A. With reservations they do.

Q. And the charts of that area, particularly Hydrographic Office Chart 2828, issued by the United States Government Hydrographic Office, also correctly states the information that is on it with reference to the tidal streams and currents in Dixon's Entrance and in the vicinity of Caamano Passage, isn't that so?

A. I would not accept it as such.

Q. You think there is a difference between the charts and the current diagrams on the charts and the Coast Pilots, is that your theory?

A. Well, if you will allow me to answer it——

Q. (Interposing) Answer that by yes or no.

A. I cannot answer it by yes or no. Allow me to explain it and I will——

Q. (Interposing) Just say yes or no, and then you can go on and explain it all you want.

A. There is a difference.

Q. Now, what is the difference.

A. Now, let me explain it to you. When I send a report in to the Hydrographic Office that I encountered some unusual current or tidal condition, they will publish that and that will show that that is reported by Captain so and so or by Pilot so

(Testimony of Sylvester Glass.)

and so on a certain ship. Now, anybody else coming through there, they might encounter altogether different conditions from what I did. That information is only put in there to draw your [2754] attention to it, and for you to watch for it, if you happen to arrive there under the same conditions that I took those observations on. It is not absolutely put in there as anything to go by, or as being absolutely correct, or to rely on altogether.

Q. That is the only answer you want to make to that question?

A. Yes, sir. That is all that can be made.

Q. All right. Now, when a ship is proceeding up through Caamano Passage, the very first thing she has to do is to give a berth to that rock which dries 12 feet off the south end of Zayas Island, and on which the "Denali" stranded, isn't that right?

A. You have got to look out for it, yes.

Q. They first have got to give a berth to that rock before they begin navigating in mid-channel, isn't that so?

A. That is another question that I cannot answer unless I can explain it to you.

Q. Well, those are the instructions in the British Columbia Coast Pilot, and also in the United States Hydrographic Office issue of the British Columbia Coast Pilot, are they not?

A. Yes, sir.

Q. Now, in order to——

(Testimony of Sylvester Glass.)

A. (Interposing) May I draw your attention to the fact, as I stated before, that the funny part of going through Caamano Passage is that it seems that no matter what angle you approach there, and anybody that has been running through there can tell you the same thing—the vessel—as soon as you can see the opening between [2755] Zayas Island and Dundas Island you would swear that the vessel was absolutely in mid-channel clear of all dangers.

Q. Is that the reason why you have to first be sure that you have given a berth to that reef on which the “Denali” stranded before you begin navigating in mid-channel? Isn’t that the reason?

A. Surely.

Q. In order to give that berth you have got to keep on your compass course with a known time and maintain your dead reckoning position until you can get a definite bearing on a landmark such as that southern end of Zayas Island, and get your bearing on it, before you begin this mid-channel piloting which you say will run you on the reef there, isn’t that so?

A. No, sir.

Q. Well, explain why it is not so?

A. If you come up there and you run a course and get a bearing off of the south end of Zayas Island, you are going to pile up. It is too close to the reef in the first place. As long as the vessel in mid-channel looks an even distance between Zayas Island and Dundas Island, you are clear, and you

(Testimony of Sylvester Glass.)

are going to haul that ship and keep her clear as much as you think is necessary to keep her off the rock.

Q. What is the distance from Triple Island Light to this reef on which the "Denali" stranded?

A. Well, approximately about fourteen or fifteen miles, approximately. I cannot tell you the exact distance.

Q. Now, if a compass were in good condition so that it had—— [2756]

The Court: (Interposing) The Court will take a five minute recess.

(Recess)

Q. (By Mr. Ryan) Is the following statement true or false, "A person attempting to find"——

The Court: (Interposing) Please identify what you are reading.

Mr. Ryan: I was going to ask him just the straight question.

The Court: Well, identify it, please. If you are reading something verbatim out of a book, identify what you are reading.

Mr. Ryan: All right.

Q. (By Mr. Ryan) I read to you from pages 130 and 131 of "Weather" by P. R. Jamieson, Meteorological Assistant, F.R.G.S., fourth revised edition, and comprising, among other things, chapters on the compass; published by Taylor Instruments Company, Rochester, New York, U. S. A., 1923, as follows:

(Testimony of Sylvester Glass.)

“A person attempting to find his way by a map without a compass would be as well off as a steamer without a propeller. It would be almost impossible for him to put the map in front of him so that it would be a reproduction of the country ahead of him unless he knew positively and absolutely in which direction north was”.

Is that statement true or false, in your opinion?

A. I cannot answer that because in my case I go by what I [2757] can see up there. Most of the time I go by what I see up there. If I cannot see, I don't go. In theory probably that is right, but in practice probably it would not work.

The Court: (Interposing) When you say “up there”, you mean Alaskan waters?

The Witness: Yes, sir. I depend up there mostly on my local knowledge. I can go through there as long as I can see. As long as I can see any land at all I will go through there, whether it is day time or night time or any other time.

Q. (By Mr. Ryan) You have a two and a half mile wide expanse of water ahead of you, have you not?

A. Yes, sir.

Q. And there is no difference between Alaska and any of the rest of the world in that respect?

A. Not when you come to a narrow passage, no.

(Testimony of Sylvester Glass.)

Q. Now, when you have a compass in good condition, you can know the direction to follow going through there, if you have a proper chart, isn't that so?

The Court: If you are talking about compasses, I wish you would ask him about compasses. All these other things have been elicited by answers before, and you are simply repeating those things over and over again.

Mr. Ryan: I am going into that which was brought out by Your Honor.

The Court: If you are starting on compasses, ask him about that, and nothing else.

Mr. Ryan: No, I am not starting on that. I am [2758] trying to show that there is absolutely no big difference so far as this particular area is concerned, as far as navigation is concerned, than any other place in the world that has the same expanse of water.

The Court: The Court will let you propound this last question and he may answer it.

Q. (By Mr. Ryan) Do you remember the last question?

A. You asked me if there was any difference up there as compared with any other locality in the same condition or under the same condition, isn't that it?

Q. Yes.

A. Well, all inland waters will probably have

(Testimony of Sylvester Glass.)

the same peculiar peculiarities regarding navigation through them.

Q. That is, if you have a good compass and a proper up to date large scale chart, and the proper tide tables and the proper current tables, and Coast Pilots, you can navigate up through Caamano Passage, the same as you could in any similar expanse of two miles and a half wide water in the world, could you not?

A. No, I would not say that you could.

Q. Now, tell me why you could not?

A. Well, you can have all the charts and all the Coast Pilots, and everything you want, but unless you have some local knowledge up there you are not going to get through there without the chance of getting in trouble.

Q. Well, if none of these unusual conditions that you have mentioned exists, then your chances of getting in trouble are practically nill, unless there is something wrong with the compass, isn't that so, under those circumstances? [2759]

A. Well, you can see here—as long as you can see, why, the compass does not enter into it.

Q. And if you cannot see, it does, is that right?

A. If you cannot see, you don't go through.

Q. That is right. If you cannot see a recognized landmark?

A. Yes, sir.

Q. Now, before you turn west into Brown's Passage you were in Chatham Sound, weren't you, on these voyages that you made up there?

(Testimony of Sylvester Glass.)

A. I didn't come up Chatham Sound. I came up inside.

Q. I know, but before you made the turn through Brown's Passage to the westward, you were in Chatham Sound?

A. Yes, sir.

Q. Now, the usual course of vessels in Chatham Sound that are bound up to the northern part of Dixon's Entrance and to the westward, like Prince of Wales Island, and Ketchikan, is to go straight north up Chatham Sound and then make the turn around to the westward, around Lord Light, isn't that right?

A. No, sir. There is no usual run.

Q. There is no usual run?

A. No, sir.

Q. Isn't there a usual run given in the United States Coast Pilot—Alaska Pilot—Alaska Coast Pilot, Volume I—Part I, issued by the United States Government?

A. The usual route?

Q. Yes, isn't there?

A. Why, there are a lot of usual routes up there that we do not use. [2760]

Q. Isn't there a usual route given in the United States Coast Pilot for Alaska, part I, to Dixon's Entrance and Yakutat Bay?

A. To Ketchikan there is.

Q. For vessels coming up the inside passage, isn't that right?

(Testimony of Sylvester Glass.)

A. Yes, sir.

Q. Now, when you are in Chatham Straits you are on the inside passage, are you not?

A. Yes, sir.

Q. And the inside passage is the usual route—and on the inside passage the usual route is to go up north in Chatham Sound and make the turn to the left or westward past Lord Light between Cape Fox and Dundas Island, isn't that so?

A. No, sir.

Q. Are you familiar with the Alaska Coast Pilot, No. 1?

A. Yes, sir; I have read it.

Q. What does it read?

A. I don't know just exactly what it reads now.

Q. And you say that it doesn't show any usual course?

A. Nobody going up there follows that. There are a lot of courses, and there are a lot of routes and lots of other information in there that we don't use.

Q. I show you a map at the very beginning of this United States Coast Pilot, Alaska, Part I, and I will ask you if that does not show the usual route of vessels (handing book to witness)?

A. I don't know.

Q. Well, look at it and see.

A. I know, but just a minute. Where does this start from? [2761] That might be coming out from

(Testimony of Sylvester Glass.)

Ketchikan and coming out that way. That does not show that you come up that way.

Q. Well, Ketchikan is up here, isn't it (indicating on map)?

A. Surely.

Q. Then what are you talking about? Over to the right here—you would be way down below where you were in Chatham Sound, isn't that so?

A. There is nobody—I am telling you right now to my own personal knowledge there is no one that ever follows this route going to the west coast.

Q. I see. There is a route shown here in red ink on this chart by the United States Government as part of the United States Coast Pilot, Alaska, Part I, is there not, running from the southern part of Chatham Sound up to the northward, and then turning to the west between Lord Rock on Cape Fox and Tree Point on Dundas Island, and then continuing west, is there not, along the northern part of Dixon's Entrance?

A. Well——

Q. (Interposing) Tell me if that run is there or not.

A. This is——

Q. (Interposing) Answer the question. Don't go off on something else.

A. No.

Q. That line is not there?

A. No. This is a different route altogether.

(Testimony of Sylvester Glass.)

Q. I am asking you whether that line is there or not. Is not the line here (indicating)?

A. Yes, sir, there is a line here, yes, sir, but the line [2762] that you are referring to, and what you are trying to tell me are two separate things altogether. This does not go anywhere near the west coast of Prince of Wales Island.

Q. Isn't there a line there?

A. Yes, sir, there is a line there.

Q. The course for a vessel to follow?

A. I don't know what that is. There is a red line shown there, yes.

Q. And it is the only red line on the chart, isn't it?

A. Yes, sir.

Q. And it show the inside passage, doesn't it?

A. It shows the inside passage, yes, sir.

Q. And you were in the inside passage when you were in Chatham Sound?

A. Yes, sir.

Q. And that is further shown in detail over here on page 9 of that book, is it not, on the run from Lucy Island northward, past Whitesand Island, Grein Island and past Tree Point to along the northern side of Dixon's Entrance?

A. No, sir. It shows here that this is the course to Ketchikan. If you will read them down you will find that that is the course given, and that line there is to Twin Island, Hog Rocks, Angle Point, Mountain Point into Ketchikan. You are talking

(Testimony of Sylvester Glass.)

about a different thing than what you are bringing up to me in the book.

Q. Well, Ketchikan is considerably to the westward of Dundas Island and Zayas Island, isn't it?

A. Why, it is way up the inside passage here (indicating). [2763]

Mr. Bogle: If Your Honor please, I want to interpose an objection on the ground that this is not proper cross examination and that it is immaterial.

The Court: Except possibly to test the witness' credibility and experience, it is difficult for me to see what materiality it has. I have been thinking for about the last twenty minutes that counsel had covered all the ground that was covered on direct examination.

Mr. Ryan: I am finished with that.

The Court: But the Court always hesitates to cut counsel off, but request counsel to try to finish as soon as he can.

Q. (By Mr. Ryan) You have stranded some vessels yourself, Captain, haven't you?

A. Yes, sir.

Q. How many.

A. Two.

Q. What are their names?

A. I was on one that my pilot stranded, and one of them I was on the "Admiral Watson", where I was on watch myself.

Q. You were the captain, weren't you?

(Testimony of Sylvester Glass.)

A. Yes, sir.

Q. That was in Alaskan waters, wasn't it?

A. Yes, sir.

Q. Do you know Ernest Falk?

A. Do I know him?

Q. Yes.

A. Well, he was out to my house one day.

Q. That is Ernest Falk sitting over there, is it not (indicating)? [2764]

A. Yes, sir. That gentleman was out to my house one day.

Q. All right. What in your opinion does good and safe practice require with respect to the frequency of adjustment of compasses on steamers sailing to Alaska from Seattle?

A. To adjust them any time that the master sees fit to have them adjusted.

Q. Well, can you answer that question? Answer that question with reference to the period of time. That is, the frequency of testing.

A. No.

Q. That in your opinion good and safe practice requires.

A. No. There is no set period of time.

Q. What are the various reasons why, in your opinion, compasses need adjustment?

A. Well, when they show excess deviation, or sluggishness, or things like that, when, then, of course, they should be adjusted.

(Testimony of Sylvester Glass.)

Q. Are those the only reasons that you can think of?

A. Yes, sir.

Q. For the necessity of compass adjustment?

A. Yes, sir.

Q. I believe you testified on direct examination that excessive deviation in your opinion was a certain number of degrees, is that right?

A. Yes, sir.

Q. Well, now, if the master does not know the amount of the deviation, you said there would be a different number of degrees, isn't that right?

A. If he didn't know? [2765]

Q. Yes.

A. I beg to differ. No master can know without knowing the deviation of his compasses.

Q. All right. How many degrees of deviation on the compass would be dangerous in your opinion if the master didn't know about it and if the vessel were sailing from Seattle to Alaska through Hecate Straits and Caamano Passage?

A. Well, it is a big question, stating if he didn't know.

Q. Yes.

A. Why, any amount of error in your compass would be dangerous if you didn't know what it was.

Q. Well, what do you mean by "any amount of error", thirty seconds?

A. No. Say two degrees probably would throw him off on any length of time, but on short courses

(Testimony of Sylvester Glass.)

where you change courses all the time, why, four or five degrees unknown deviation would not affect him any.

Q. I thought you testified on direct examination that six degrees would be dangerous on a compass that you knew about.

A. I didn't say "dangerous". I said that no amount of deviation on a compass is dangerous if you knew it.

Q. You don't think that a large deviation on one of several headings of a compass makes that compass dangerous and unsafe to use, provided you know about the amount?

A. If you know the amount—

Q. (Interposing) Shown at a particular instant?

A. If you know the amount of the deviation I do not figure that any amount of error is dangerous.

[2766]

Q. Well, suppose a ship had a propeller and lost one of the blades of the propeller. Now, if you knew about that you could still operate the engines and get there, could you not?

The Court: That is argumentative, counsel. Asking him about a propeller when you have been asking him questions about the compass is argumentative. Proceed and ask him questions about the compass.

Mr. Ryan: Yes. [2767]

(Testimony of Sylvester Glass.)

Q. (By Mr. Ryan) At your residence in Seattle, on or about October 1, 1937, did you or did you not have an interview with Mr. Ernest Falk in which you said, in substance and effect, as follows, "In my opinion the compasses of a vessel engaged in the Alaska trade should be adjusted at least once a year; in all events should be adjusted after a winter lay-up at West Seattle." Did you or did you not so state at that time to Mr. Falk?

A. I did not. Now, in regard to this, Your Honor, as there is a question of going to work and asking me these questions about when Mr. Falk was out to the house talking to me, I wish to state to you that there was two persons, my wife and Mr. Burke was in the house at this conversation—

Q. (Interposing) Will you first tell us what you did say, and we will come to the other circumstances later.

A. Falk came out to the house and wanted to know if I would appear as your witness.

Mr. Summers: (Interposing) If the Court please, I wish to object—

Mr. Long: (Interposing) I think the witness should be permitted to ask the question.

Mr. Summers: This is purely an impeaching question. Facts and circumstances possibly may be permitted to be brought out on redirect examination of this witness, but I submit that the witness should not be permitted to inject voluntary comments of his own. He has said he didn't make any such statement.

(Testimony of Sylvester Glass.)

Q. (By Mr. Ryan) Do you deny that you made that statement?

A. Yes, sir; I deny it. [2768]

Mr. Bogle: The next question was "What statement did you make?" And now they are trying to stop the witness from answering that question.

Mr. Ryan: I move to strike out the answer as not responsive, in view of that statement.

The Court: The motion to strike is granted, and if any explanation is desired it may be gone into on redirect examination.

Mr. Bogle: May I ask that the question be read that was asked the witness?

The Court: I think I understand it sufficiently to be satisfied with the ruling made, and you can, on the side of the Petitioner, redirect the examination along that thought, if you desire.

Q. (By Mr. Ryan) What did you say, if anything, to Mr. Falk on or about October 1, 1937, with respect to the frequency of adjustment of compasses on a vessel engaged in the Alaska trade, irrespective of whether she had been laid up; and also in respect to the frequency of adjustment of compasses whenever a ship had been laid up for the winter at West Seattle?

A. I told him there was no set time of adjusting compasses, and also told him I was on some ships where the compasses had not been adjusted for seven years, and were still running.

Q. What did you tell him was your opinion

(Testimony of Sylvester Glass.)

with respect to what good and safe practice required with respect to the frequency of adjustment of compasses on vessels engaged in the Alaska trade?

A. A question like that was never asked, to my knowledge. [2769]

Q. What did you tell Mr. Falk on that occasion, on or about October 1, 1937, in Seattle, with respect to the frequency of the adjustment of compasses on vessels which had been laid up for the winter at West Seattle?

A. I didn't tell him any frequency.

Q. You were not asked that question at all?

A. I was not asked that question, how often should they be adjusted. I told him any time that the master of the vessel wanted it, or the compasses were in bad order, they should be adjusted.

Q. What did you tell him at that time with respect to the frequency of adjustment of compasses on a vessel engaged in the Alaska trade after a winter lay-up at West Seattle.

A. The question of winter lay-up was never brought up.

Mr. Bogle: Just a minute, Captain; I want to object to this form of question as not being the proper form of impeaching question.

The Court: I think there is some merit to that objection. You should ask him the specific question.

Q. (By Mr. Ryan) Did you or did you not—

The Court: It has been covered, and you need not go back over the same ground, but in the future

(Testimony of Sylvester Glass.)

ask him so-and-so, whether or not he made such-and-such a statement.

Q. (By Mr. Ryan) Did you or did you not state to Mr. Ernest Falk, on or about October 1, 1937, in Seattle, in substance and effect as follows: that when a vessel is laid up for the winter at West Seattle boneyard the deviation on the lay-up heading would probably be less than on the other courses, or other crossing courses? Did you or did [2770] you not make that statement?

A. That is a new one on me. That was never brought up at all, that question.

Q. You didn't make that statement, is that right?

A. No, sir; because it is absolutely—it is out of the question to make a statement like that.

Q. Did you or did you not, on or about October 1, 1937, in Seattle, state to Mr. Ernest Falk, in substance and effect as follows, that if the vessel is laid up on a Northwesterly course the range of error would be greater on a North $\frac{3}{4}$ West course.

A. No, I didn't make any statement like that, because that is way over my head.

Mr. Ryan: That is all, Your Honor. I offer in evidence the chart, Claimants' Exhibit A-14 for Identification, as marked by this witness, being U. S. C. & G. S. Chart No. 8102, on which the witness has laid down in pencil, free-hand, the course that he followed in proceeding through Brown Passage and up Brown Passage, and then sharply to the westward over the waters of Dixon's Entrance, to the west side of Dixon's Island.

(Testimony of Sylvester Glass.)

The Court: Another copy of that chart is already in evidence?

Mr. Ryan: Yes, Your Honor. The other one is the one the second mate had.

The Court: What is the purpose of this offer?

Mr. Ryan: As illustrative of the testimony of this witness.

The Court: Very well. That puts the matter before the Court. Claimants' Exhibit A-14 is admitted for that [2771] limited purpose.

(Chart illustrating testimony of Capt. Glass received in evidence Claimants' Exhibit A-14.)

Mr. Ryan: That is all.

The Court: You may proceed now, Mr. Bogle.

Redirect Examination

By Mr. Bogle:

Q. Capt. Glass, where did this conversation with Mr. Falk take place?

A. At my home.

Q. Would you state to us, as near as you can remember, in substance, just what that conversation was?

A. Yes, sir. Mr. Falk called me up on the 'phone and wanted to know if he could come out to the house and talk about the questions he had in mind, and I told him certainly, he could come out any time. Mr. Falk came out and he wanted to know if I knew anything about the "Denali" case. I told him I knew only what I heard about it, that I was

(Testimony of Sylvester Glass.)

up North at the time she struck. However, I told him that I had discussed the case with Mr. Long, but also gave him to understand that I was not bound in any way by Mr. Long in any respect, that we had only talked the case over.

The Court: That seems to me to be very immaterial. Isn't there something more material by way of explanation that is desired, and if so won't you get right at that?

The Witness: Well, the only thing is, Your Honor, he wanted to know if I wouldn't appear as their witness, and the next day I called him up and told him it was [2772] absolutely unethical for me to appear as their witness on account of discussing the case with Mr. Long already, and any question——

Q. (Interposing) Was that the substance of the conversation?

A. Well, the compasses, there was some talk about the compasses, how often the compass should be adjusted, and different things like that that were asked, yes, sir.

Q. That is what I want. Give us, as near as you can recollect, what was said about the compasses, what you told him about the compasses.

A. One of the questions was, I believe, if a vessel laid over in the yard for a long length of time, over in West Seattle, what would be the effect on the compasses? I told him, I believe, that I didn't know what the effect of it would be, as I had never

(Testimony of Sylvester Glass.)

been on a ship that laid over in the yard. And another thing, if there was any specific time when the compass should be adjusted. I told him I couldn't answer that, because there isn't any specific time that a compass should be adjusted—in my opinion, there couldn't be. That is up to the man on the ship to see whether they needed adjustment or not.

Q. Did you have any further conversation with him about the compass, excepting as you have stated?

A. No, sir; I don't believe I did.

Q. Capt. Glass, in answering counsel's questions as to the extent upon which you rely upon the published data by the Canadian and American governments, I will ask you if you had in mind, first, the notation on Chart No. 2828, reading as follows—

Mr. Summers: (Interposing) Just a moment, if Your [2773] Honor please——

Mr. Ryan: (Interposing) This is highly leading, and I object to it on that ground.

Mr. Bogle: I am merely redirecting on the matter brought out solely by you, Mr. Ryan. You asked him if he relied upon this data.

The Court: The objection is overruled. You may call his attention to certain record information, if it is information that is in evidence, or on a chart that is in evidence.

Mr. Bogle: It is on Chart No. 2828.

Mr. Ryan: May I be heard for just a minute?

(Testimony of Sylvester Glass.)

The Court: No. The Court's ruling may stand. You may have an exception.

Q. (By Mr. Bogle) The heading title is "Average direction and rate of tidal stream." You are familiar with that?

A. Yes.

Q. Giving the average rate?

A. Sure.

Q. Did you also have in mind in answering that question this statement in the current tables, United States Coast & Geodetic Survey, 1935—

Mr. Ryan: (Interposing) Before that is read, may I suggest that this is highly leading and suggestive, and I object to it on that ground. If counsel for the witness merely wants to call his attention to the book he can hand the book to the witness and let the witness say what part of it he referred to and what part he did not refer to, but for counsel to pick out particular things and read them to the witness, and make it appear that way, [2774] it seems to me, in substance, to be suggesting the answer to the witness. He can refer to the pages and all that sort of thing, but this is leading and suggestive.

The Court: So far as identifying the place referred to, that much of your objection is sustained. All other phases and parts of your objection are overruled.

Mr. Ryan: Exception, please.

The Court: Exception allowed.

(Testimony of Sylvester Glass.)

Q. (By Mr. Bogle) Pages 7 and 8, current tables of the Pacific Coast; I will ask you if you are familiar with the statement at the bottom of page 7?

A. Yes.

Q. And at the top of page 8?

A. Yes, sir. I have read that statement.

Q. Do you remember that statement, and can you give us the substance of it?

A. The substance of it is that you do not depend on that.

Mr. Ryan: Wait a minute; is he just giving the words in the book?—If he is, I object to it. He has already said that he agrees with it, and I suggest that there is no point in asking the witness to recite it.

Mr. Long: I suggest that counsel make an objection.

The Court: The witness can take care of himself, and the man speaking for the Claimant is able to take care of himself. If you gentlemen do not quit imposing upon the time and patience of the Court, as to one man on a side helping out another man on the same side, that condition provoking further additions and enlistments on the opposing side, then I will have to just prevent you [2775] from doing it at all. Proceed, Mr. Bogle.

Mr. Bogle: I will have to have the question read. (Record read as follows:

(Testimony of Sylvester Glass.)

“Q. Pages 7 and 8, current tables of the Pacific Coast; I will ask you if you are familiar with the statement at the bottom of page 7?

A. Yes.

Q. And at the top of page 8?

A. Yes, sir. I have read that statement.

Q. Do you remember that statement, and can you give us the substance of it?

A. The substance of it is that you do not depend on that.”)

The Witness: Well, the substance of it is to the effect that you do not want to rely on those tables, as they are only approximate data given in there.

Q. (By Mr. Bogle) Is your opinion then in accordance with this statement, your personal observation there:

“The relation of current to tide is not constant, but varies from place to place, and the time of slack water does not generally coincide with the time of high or low water; nor does the time of maximum velocity of the current usually coincide with the time of most rapid change in the vertical height of the tide.”

A. I have already stated that I do not go by that.

Q. (Reading)

“In using this table it should be borne in mind that actual times of slack or strength occasionally differ from the predicted times by

(Testimony of Sylvester Glass.)

as much as [2776] half an hour and in rare instances the difference may be as much as an hour.”

A. Yes, sir. The only statement was that I said the difference was as much as three hours at some times.

Q. I call your attention to “British Columbia Pilot” H.O. No. 176, the statement on page 7, reading as follows:

“Current arrows on charts show only the most usual or the mean direction of a current; it must not be assumed that the direction of a current will not vary from that indicated by the arrow. The velocities of currents also vary with circumstances, and those given on the charts are merely the mean of those determined, possibly from very few observations.”

Are you familiar with that statement?

A. I have made that statement already.

Q. And on page 27 of the same volume, this statement:

“In crossing the entrances to inlets and estuaries it is necessary to make allowance for the current setting into or from them, according to the state of the tide.”

A. Yes, sir; absolutely. The water is bound to go in or out with considerable strength.

Q. Now, Capt. Glass, have you had any experience in piloting naval vessels, vessels of the United States, in Alaska waters?

(Testimony of Sylvester Glass.)

Mr. Summers: I make the same objection, as not redirect examination.

Mr. Bogle: I merely want to show that in spite of all the charts and perfected instruments that naval [2777] vessels navigating these waters always take a civilian pilot, and ask this witness why.

The Court: The objection is sustained, Mr. Bogle. I do not think it is necessary to go into that.

Mr. Bogle: I thought it was proper because it was brought out on cross-examination. I did not go into it at all.

The Court: It is not necessary. The Court has in mind the testimony of this witness about local knowledge and about the use of charts and compasses, and all of the rest of the testimony given. There is no use in proceeding further with any collateral matters.

Q. (By Mr. Bogle) Capt. Glass, is there any direct information contained in either the Canadian or American tide tables with reference to Caamano Passage?

A. No, sir; there is not. The nearest——

Q. (Interposing) How do you get the——

Mr. Ryan: (Interposing) Please let the witness answer the question.

The Court: Had you finished, Captain, or did you wish to add anything?

The Witness: No; I said that there is not.

The Court: Then ask him another question.

(Testimony of Sylvester Glass.)

The Witness: I was going to say, in that locality, exactly in that passage.

Q. (By Mr. Bogle) Then how do you get a reference on Caamano Passage from the published tide tables, either Canadian or American?

A. Well, I used to get it by getting the time which is published for East Devil Rock, and then split the dif- [2778] ference as near as I possibly could.

Q. East Devil Rock, is that a tidal observation station?

A. I couldn't say whether there is any actual observation taken there. I do not think there has been. It is just approximate time that they figure the tide would turn at that point at that time.

Q. What is the reference station for East Devil Rock?

A. Port Simpson. You can use Port Simpson or Prince Rupert.

Q. In the American tide tables what is the reference point for this vicinity, East Devil Rock?

A. Wrangell Narrows, I believe.

Q. You have to transpose them from the reference station to the book?

A. Yes, sir; you have to interpolate the time and the height of the water from these tables that are given.

Mr. Bogle: That is all.

The Court: Is there anything else that is necessary?

(Testimony of William Charles Ansell.)

Mr. Ryan: I think that is all, Your Honor.

The Court: You will be excused from the stand, Capt. Glass. Call your next witness.

(Witness excused.)

WILLIAM CHARLES ANSELL,
called as a witness on behalf of Petitioner, being
first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. State your name and address?

A. William Charles Ansell. I live in Seattle.

Q. What is your business? [2779]

A. Master mariner and commercial pilot.

Q. What licenses do you hold, Captain?

A. Unlimited ocean master's license; pilot for Puget Sound, Southeastern and Southwestern Alaska, including Bristol Bay and its tributaries.

Q. How many years have you been going to sea?

A. Since I was ten years old.

Q. How many years have you held a license?

A. Since 1904.

The Court: Captain Ansell, the record does not show any information as to how old you are now, and from the record we could not tell how long you have been going to sea. Will you answer that question?

The Witness: Approximately 51 years.

(Testimony of William Charles Ansell.)

The Court: That is how long you have been going to sea?

The Witness: That is how long I have been going to sea. That is the question as I understood it, Your Honor.

The Court: Was there any question about how long he had been piloting in those waters?

Mr. Bogle: That is the next question.

The Court: Very well.

Q. (By Mr. Bogle) During that period of 51 years how much time have you been navigating as an officer or pilot in Alaska waters?

A. As officer since 1904.

Q. With what companies have you been connected?

A. With the Seattle Steamship Company, the Borderline Transportation Company, the Northland Steamship Company, [2780] The Pacific Coast Steamship Company, the Northwestern Fisheries, International Fisheries, and then various commercial odd jobs which I had as pilot.

Q. Have you had any experience as a Navy pilot?

A. I have been doing quite a lot of Navy piloting since 1929.

Q. Any of that in Alaska waters?

A. All of it in Alaska waters. Well, that is the Inside Passage, through British Columbia and Alaska.

(Testimony of William Charles Ansell.)

Q. To your knowledge, Captain, is it the practice of the United States Navy to employ civilian pilots in navigating Alaska waters?

A. In most cases vessels going on the Inside take a civilian pilot.

Q. What has been the extent of your experience in Hecate Strait and Dixon's Entrance, particularly that portion of Hecate Strait from a point abeam of Triple Island to the entrance of Caamano Passage?

A. For two years, or two seasons, I was second mate and acting pilot on the "Diamond Cement".

Q. Where was she navigating?

A. From Seattle to View Cove, on Dahl Island.

Q. Did she on that route go through Hecate Straits?

A. We went Hecate Straits every trip, either from the southward or through Brown Passage.

Q. How often did you go through Caamano Passage?

A. On her we never went through, but while I was with the Northwestern Fisheries—she is now called the "North Haven", but she was then the "Eastern Gale"—I used to go through twice or three times every season. [2781]

Q. Have you ever taken a Navy ship through there?

A. I was through last year with the "Louisville".

Q. What size ship is that?

A. 10,000 gross.

(Testimony of William Charles Ansell.)

Q. You were on her in what capacity?

A. As commercial pilot.

Q. Have you had sufficient experience in the locality mentioned, that, is, Hecate Straits and Caamano Passage, to form any opinion, from your own observations, as to the state of the tide in a position, say, first, ebb tide within a mile or two miles south of Zayas Island?

Mr. Summers: If Your Honor please, I want to renew the objection that we made to the testimony of Capt. Glass this morning, and to this line of examination, on the ground that if this examination is tending to bring out testimony contradicting the answers to the interrogatories, and if it is testimony upon which the petitioner may not rely—and they are bound by their answers to the interrogatories—we object to it on that ground; and if it is in harmony with those answers to interrogatories, then it becomes immaterial.

Mr. Bogle: I do not quite understand the last statement, that it becomes immaterial. Do you admit the interrogatories without any proof?

Mr. Summers: No; but I contend that you cannot contradict the interrogatories.

The Court: The Court can pass upon this question raised without any further statements.

Mr. Ryan: I would like to object to this whole line of examination. [2782]

The Court: Mr. Ryan, I would like for counsel on your side to decide who is going to speak as representing your side to the Court.

(Testimony of William Charles Ansell.)

Mr. Ryan: Mr. Bogle just made the statement on the record—

The Court: Mr. Summers is a very able lawyer, and so are you, and there is no need of having two able lawyers speak for one side at a time. Is there something vital that ought to be put on the record on your side, except what Mr. Summers has covered? I do not want to hear an argument.

Mr. Ryan: I merely wanted to make the objection on the same ground that I made the objection at the beginning of the testimony of Capt. Glass, to the Petitioner being permitted to produce evidence in this way without stating its position as to whether the petitioner now takes the position that it knew the cause of this stranding and is now trying to show it, or whether it is relying on its petition as it stands that it doesn't know the cause of this stranding, whether it is relying on peril of the sea or negligent navigation or an unseaworthy ship, which became unseaworthy after sailing, or what the position of the Petitioner is. I was going to ask Your Honor to have the objection on all those grounds, and on the grounds stated by Mr. Summers, the grounds stated to the testimony of Capt. Glass—I would like to have that objection being understood as made to each question.

The Court: The Court is agreeable to that, unless there is some objection to it.

Mr. Bogle: No. [2783]

Mr. Ryan: If that is agreeable.

(Testimony of William Charles Ansell.)

Mr. Bogle: That the same objection runs to all this line of examination?

The Court: Yes.

Mr. Bogle: That is quite agreeable.

The Court: The objection is overruled, and the Court is agreeable to the objection being considered as running to this whole line of testimony, in which event the Court overrules the objections. Do you wish to preserve an exception?

Mr. Ryan: Yes; I would like to reserve an exception.

The Court: Exception allowed.

Mr. Ryan: To each adverse ruling. And I would like to make a formal motion that the Court direct the Petitioner at this time, and counsel for Petitioner, to state on the record what they are trying to prove by this witness, that is, what the general point is. That is, are they trying to show peril of the sea, or negligent navigation, or unknown cause of the stranding, or a known cause, and if so which one they say it is. I think we are entitled to that, especially at this stage of the proceedings. Frankly, I do not know what the Petitioner is trying to prove by this witness, or by Capt. Glass. I do not know what legal point they are trying to prove.

This testimony contradicts, as I understand it, the formal pleadings before this Court, in which they swore that the cause of this was unknown, that they do not know the cause. I object to padding the record and wasting a lot of our time here.

(Testimony of William Charles Ansell.)

The Court: There is more time wasted in arguments and the statements of counsel than anything else I know of.

Mr. Bogle: I think I am entitled to make a statement as to what portion of the pleadings we are now directing our testimony.

The Court: Do you wish to make a statement.

Mr. Bogle: Yes; and I wish to have them advise us, because I assume it to be our duty to advise the Court fully as to all the circumstances, and then it is for the Court to decide.

The Court: That is what the Court had in mind.

Mr. Bogle: Further, it is our burden as to limitation of liability, and it is our duty, to show to the Court all the circumstances surrounding the situation, and that as to each of such circumstances we were without privity of knowledge.

The Court: The Court is ready to rule, unless counsel feel that there is something else to put in the record.

Mr. Ryan: I think, Your Honor, that this trial would be materially shortened, and the issues would be narrowed, and the thing brought into some reasonable compass, if the Petitioner were required to state on the record its exact position here, as to what facts it relies on, what general facts, what ultimate facts, because, as I see it——

The Court: You have already said that in your previous statement.

Mr. Ryan: Yes, Your Honor.

(Testimony of William Charles Ansell.)

The Court: The motion is denied.

Mr. Ryan: Exception, please. [2785]

The Court: An exception is allowed.

Mr. Bogle: I will ask that the question be read now.

The Court: At this point we will take the noon recess.

(Whereupon a recess was taken until November 16, 1937, at the hour of 2:00 o'clock p.m.) [2786]

November 16, 1935,
2:00 o'clock P. M.

Court convened pursuant to adjournment;

All parties present.

The Court: You may proceed with the trial.

Mr. Bogle: I think there was a question unanswered, Your Honor.

The Court: Yes.

Mr. Bogle: Take the stand, Mr. Ansell.

W. C. ANSELL,

resumed the stand for further examination.

Further Direct Examination

By Mr. Bogle:

Q. Will you please read the question, Mr. Reporter?

(Question read as follows: "Have you had sufficient experience in the locality as mentioned, that

(Testimony of William Charles Ansell.)

is, Hecate Straits and Caamano Passage, to form any opinion, from your own observations, as to the set of the tide in a position, say, first, ebb tide within a mile or two miles south of Zayas Island?")

Q. Just state what your experience in that connection has been, Captain.

Mr. Ryan: Just a minute. May I examine the witness to ascertain what his experience has been there? I mean that his conclusion as to the experience that he has had for him to testify as to this, it seems that it is for the Court to decide. [2787]

The Court: In view of the witness' former testimony as to his experience in Alaska—in southeastern and southwestern waters, Mr. Ryan, I think that that was covered.

Mr. Ryan: This question is asked with reference to Caamano Passage. May I ask a question or two preliminary as to whether he has had such experience up there?

The Court: Mr. Bogle, will you kindly go into that a little further, and then I will see.

Mr. Bogle: Yes. I thought that I had.

Q. (By Mr. Bogle) What experience have you had in the waters in the area of Dixon's Entrance, and Hecate Straits, and particularly from Triple Island Light to the entrance of Caamano Passage?

A. For two seasons I was second mate, acting as pilot on the "Diamond Cement", and we made a round trip each week so that meant that I had to go across Dixon's Entrance twice a week.

(Testimony of William Charles Ansell.)

The Court: Over what period of time?

The Witness: Two seasons. Of course, they don't run in the dead of winter there.

Q. (By Mr. Bogle) Are you familiar with the waters south of Caamano Passage?

A. Yes, sir.

The Court: For about a mile as I understood the question of Mr. Bogle.

The Witness: Yes, sir. The whole district.

The Court: The whole district?

The Witness: Yes, sir. [2788]

The Court: You mean from Zayas Island?

The Witness: From Zayas Island clean out to the ocean, and then up the other way.

Q. (By Mr. Bogle) Then, Captain, solely from your experience what would you say was the set of the ebb tide at a point one mile or two miles south of Zayas Island?

A. Well, that would depend mainly upon the time of the tide; the weather; and other little fundamentals that might come in. I know from experience in crossing there that there were no two trips crossing there from Triple Island to Dall Island that I could steer the same course that I had steered the previous trip.

Q. Have you had any experience in going through Caamano Passage?

A. Yes, sir, when I was on the "Perry L. Smithers" and then I done some towing through there, and I have also done some fishing out around there many years ago.

(Testimony of William Charles Ansell.)

Q. To your knowledge is there a general set of the tide in that locality that I have mentioned?

A. The general set of the tide is to the westward.

Q. That is on an ebb tide?

A. That is on an ebb tide, yes.

Mr. Ryan: I object to that as highly suggestive and leading, and I move to strike out the answer.

The Court: The objection is overruled and the motion denied, in view of what he said before, and in view of the question before, Mr. Ryan.

Q. (By Mr. Bogle) Captain, from your experience are you able to tell us what the general set of the tide— [2789] that is, the general set of the current, I should say, is on an ebb tide at a point immediately west of Brown's Passage in Hecate Straits?

A. Well, the current, as a rule, runs up along the islands, and with a strong westerly tendency to shoot you to the left on account of the Skeena River coming out there, which is one of the largest rivers there is in the territory, and the passages being so narrow, that there is an awful force of that water pushing through there and naturally it tends to send you to the left.

Mr. Ryan: May I ask that that answer be read?

(Answer read)

Q. (By Mr. Bogle) What direction, magnetic, do you mean when you say, "to the left"?

A. Well, that would be west toward the south'ard.

(Testimony of William Charles Ansell.)

Q. Where is the Stikine River?

A. I did not say the Stikine River. I said the Skeena River.

Q. Yes; where is the Skeena River?

A. Well, Kennedy Island—it is just a little to the south'ard of Prince Rupert. Kennedy Island makes a sort of a delta there, and it comes out on both sides of Kennedy Island and pushes out through the delta towards Eddy Passage.

Q. Is that a large river?

A. That is one of the largest rivers in the territory.

Q. What is your actual experience about the set of the tidal current and the time of the commencement of the ebb tidal current and the flood tidal current as [2790] compared with the predictions obtained from the charts and the B.C. Pilot and the American Current Tables?

Mr. Ryan: I object to that until similarity of conditions are divulged similar to that that the "Denali" encountered—until that is first incorporated.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

A. Well, they will vary anywhere from an hour to three hours against the predicted tides from the base from which we get our observations from, which are mainly forty or fifty miles away from Hecate Straits.

(Testimony of William Charles Ansell.)

Q. What do you mean by that?

A. Well, if we are taking Port Simpson or Prince Rupert or Ketchikan from the tide books, or Wrangel Narrows, they are many, many miles away from the actual place and there are lots of allowances that have got to be made.

Q. Is there any reference station at or near Caamano Passage?

A. There is no reference station at or near Caamano Passage, but there is a margin on the chart—there is a reference on the chart that will give you some data.

Q. Captain, in navigating the inland passages of Alaska, such as Caamano Passage, to what extent do you depend upon the compass?

A. The only thing that we depend upon the compass for is to give us a base course to start out with, and then when once we get started, why, then it is up to your [2791] local knowledge and the figures that you have made about what the tide is supposed to do, and then what she does do, which is probably an altogether different matter, and then we rely on the land and what we see as we go along.

Q. Well, after you have picked up a landfall to what extent do you rely upon dead reckoning?

A. Well, as I stated before, we put the ship on her base course and take the time that we start her off on that course, and we know the distance that we have got to run, and we will run along approximately for a little while until we figure that we

(Testimony of William Charles Ansell.)

should see this land. If we don't see it—well, we will either slow her down or stop her until we do see something.

Q. I am assuming that you have picked up the land, Captain. From that point forward to what extent do you rely on the compass or dead reckoning course?

A. Well, as I stated before we put her on her base course and then watch for developments. If the tide sets say one way, we will haul the ship the other way. The only thing to do in Alaska, with her narrow waters, is to keep her in the middle and off the beach.

Q. Having set your base course, have you had occasions where you found it necessary to haul to the right or to the left to make that course good—the mid-channel course?

A. There is hardly a time when you don't have to haul one way or the other.

Q. Is it customary in Alaska to note those changes in your log book? [2792]

A. Not on the average commercial vessel, no, sir.

Q. I mean on commercial vessels.

A. No, sir.

Q. During what portion of your career have you operated out of the Port of Seattle?

A. Practically all of my life since I landed here.

Q. Are you familiar with the custom in this port with reference to compass adjustments?

(Testimony of William Charles Ansell.)

A. I should say that I ought to be.

Q. What is that custom?

Mr. Ryan: Just a minute. I ask that he be—he has not asked him whether there is a custom or not.

Q. (By Mr. Bogle) Do you know of any custom in this port?

A. Not a laid down custom, no, sir.

Q. Do you know of any custom of adjusting or compensating compasses by a shore adjuster at any regular intervals?

A. Not unless they are applied for by the master.

Q. I say, do you know of any custom of doing that at regular intervals?

A. No, sir.

Q. Under what circumstances is that done—that is, is that compensation done by a shore adjuster?

Mr. Ryan: That is objected to.

The Court: If you know.

Mr. Ryan: The witness said that there was no custom.

Q. (By Mr. Bogle) If you know, Captain.

The Court: In view of that condition, he may answer.

A. The only custom, Your Honor, is this, that if a captain [2793] goes aboard his vessel and he finds his compasses are out of order, all that he has to do—now, this has been my experience—is to notify his office and tell them that he wants those compasses adjusted, and I have never been turned

(Testimony of William Charles Ansell.)

down, and I do not know of any other shipmaster yet that has been turned down on that object.

Q. Well, under what circumstances would you as an experienced shipmaster consider it necessary to request the compensation or adjustment of your compasses by a shore adjuster?

A. Well, on leaving the dock or moving around the harbor there to pick up my cargo, if I found that the compasses were sluggish, or that they had some big bubble in the compass, or they had been ashore for repairing, and had quite a large error on fixed points, well, I would figure that I would be justified to ask for some adjustment on that compass.

Q. Would you determine that in a loaded or a light ship?

A. Well, ordinarily on a light ship, because the minute that I get my cargo on board my ship the adjustments go all to pieces then.

Q. What do you mean by that?

A. Well, you bring on a lot of steel, or a lot of iron, and you adjust your compass today, and then you go down here to the can company and load on a load of cans, and then you go some place else where you add a lot of railroad iron, or you put on a couple of boilers or locomotives on her, your compasses all go haywire again.

Q. Captain, if the master of the "Denali" checked his [2794] compasses, either by taking cross bearings or by known headings of the dock,

(Testimony of William Charles Ansell.)

or by running a magnetic course on the following headings, West Northwest, Northeast by North $\frac{1}{2}$ North, East Northeast, West by North $\frac{1}{2}$ North, North Northwest, East by South, Southeast by East, West Southwest, South Southeast, and found no deviation or error as large as one degree on any one of those headings, would you as an experienced ship master deem it good seamanship or necessary to have that ship swung for compensation by a shore adjuster?

A. Well, if the master swung that ship on that many headings, he is practically taking a deviation card of his own, and has no deviation at all, and the compasses do not need any adjustment. They are all right.

Q. I don't want you to understand, Captain, by that question that I mean that he had swung the ship in the ordinary sense. I merely am saying that he checked it either while alongside the dock or by steering a magnetic course, or by taking cross bearings. Now would the result as stated be—

A. (Interposing) As long as he had no deviations, why, I do not see—as long as he had no deviations, why, there was no need of adjusting compasses.

Q. What would you say, Captain, from your experience as a shipmaster if the captain, after loading cargo and putting cargo on the well deck which had a certain amount of iron and steel, a cargo of magnetic tendencies, swung his ship on fourteen

(Testimony of William Charles Ansell.)

points from West Southwest to Northeast; took azimuths on each heading, and that from West [2795] Southwest to North he had practically zero, and in no case exceeded half a degree, and from North to Northeast the errors increased slightly to a maximum of two degrees on northeast—this was after the cargo was loaded—would you say that his compasses were in proper condition for the northbound voyage?

A. I would say that they were.

Mr. Bogle: That is all, Captain.

Cross-Examination

By Mr. Ryan:

Q. How many times have you been through Caa-mano Passage?

A. Well, I should say about twenty times.

Q. And on what ships?

A. On the "North Haven". Of course she has had three names. She was the "Eastern Gale"—that was her original name when she was bought from the Shipping Board, and then she was changed to the "Perry L. Smithers", and then she was changed to the "North Haven".

Q. What other ships?

A. And I was on the "Comet", which was a fishing boat that belonged to the San Juan Fishing Company, many years ago, and we fished out in that vicinity, and we used to dodge in and out of there right along. And then I was on the "Iroquois", a tug, this spring, and I towed a barge through

(Testimony of William Charles Ansell.)

there, and I think it was the 19th or the morning of the 20th of July this year that I came through with the USS "Louisville".

The Court: Did you come through there? [2796]

The Witness: Yes, sir.

The Court: Caamano Passage?

The Witness: Down through Caamano Passage from Ketchikan, bound for Astoria.

Q. (By Mr. Ryan) How many years ago was it that you last came through Caamano Passage on this ship that you called the "Perry L. Smithers", the "Eastern Gale" and the "North Haven"?

A. Well, in 1927.

Q. How many years has it been since you went through Caamano Passage on the "Comet"?

A. Oh, that was quite a lot previous to that.

Q. About what year?

A. Well, the way that I remember it, it was the year that we had the first Potlatch down here. I don't know just what year it was, or what date it was, but I know it was when we had the first Potlatch, when I came back through Caamano Passage on the "Comet".

Q. What was it, 1890?

A. No, no. That is since then. It was about 1914 or 1915; somewhere around in there.

Q. And then you were through there on this tug this last spring?

A. Yes, sir.

Q. Towing a barge through there?

(Testimony of William Charles Ansell.)

A. Yes, sir.

Q. On a hawser astern?

A. Yes, sir.

Q. How long was the hawser?

A. Oh, going through there we had around 300 to 400 feet. [2797]

Q. How much hawser did you have before you went through there?

A. Well, coming up Hecate Straits we had about a thousand feet.

Q. And then you went through there on the "Louisville"?

A. Yes, sir.

Q. These last two have been since the stranding occurred?

A. Yes, sir; they have been since the stranding occurred.

Q. Now, when you came on the "Louisville" you didn't come up through Caamano Passage at all, isn't that right?

A. That was not up at all. I came down through there.

Q. Certainly. You came down through there?

A. Yes, sir.

Q. In other words, you got a very definite fix on Tree Point Light and another light, didn't you?

A. Not so definite.

Q. Didn't you?

A. Not so definite.

Q. Didn't you get a definite cross bearing on

(Testimony of William Charles Ansell.)

Tree Point Light and another light before you came down through Caamano Passage to the southerly?

A. We had a fix on the north end of Zayas Island.

Q. Yes.

A. And with respect to Tree Point Light, it was a misty rainy night. The light was not fixed from there. It was fixed from the north end of Zayas Island.

Q. Well, it is a little safer coming down through Caamano Passage from the north than it is coming up from the south'ard, isn't it?

A. Well, of course, the major portions of the rocks that extend beyond the island extend towards the south'ard, but you still have a couple when coming up the north'ard there. [2798]

Q. (By Mr. Ryan) Yes; but coming down from the northward you have these aids to navigation? You have Tree Point Light right behind, don't you?

A. She isn't quite right behind.

Q. How far is Tree Point Light from this reef on which the "Denali" stranded, that dries at 12 feet?

A. It is about 16 miles. I wouldn't be exact.

Q. What is the visibility of that light, as to the height of eye, about 28 feet?

A. About 14 miles.

Q. You have never examined the chart to find out what the visibility of that light is?

(Testimony of William Charles Ansell.)

A. Oh, I have, lots of times, but we cannot carry all those lights in our head. You have a thousand and one lights between Seattle and Alaska.

Q. If the fact is that Tree Point Light is only 14½ miles from this reef, which dries at 12 feet, on which the "Denali" stranded, then the fact is that you, coming down from the northward, would have that light right back of you and in sight all the way down?

A. If you could see it, yes.

Q. Certainly. And that is a little different from the situation if you are going up from the southward, isn't it?

A. Oh, a little bit.

Q. Now, take this case of the "Louisville", that came down; you were on there merely as advisory to the navigating officer and the captain, were you not?

A. Yes.

Q. You were not in charge of a watch at all?

A. No; except while I was on the bridge they asked me what [2799] was the next course, etc., and so on, and I would tell them, and we would lay her on that course and away we would go.

Q. They were the ones navigating the ship; you were just advising them?

A. They were going by what I said.

Q. Isn't it a fact that all down through Caamano Passage a compass course was steered, and a record

(Testimony of William Charles Ansell.)

kept in the log book, in the case of the "Louisville"?

A. I couldn't tell you, sir. I had nothing to do with that whatsoever.

Q. In other words, you were not heading to the dead reckoning position of the ship, is that it?

A. They would ask me right along. I put her in the middle of that channel, and I kept her in the middle of that channel. I ordered the course to suit myself.

Q. You do not know what entries were made in the log book?

A. No, sir. That was not part of my business.

Q. You didn't have anything to do with what they did in keeping the dead reckoning position?

A. I know there was a dozen officers on that bridge, which we do not have on a merchant vessel, and what they are doing it is hard to keep track of.

Q. At least, you do not know that they did not keep an accurate compass record of every course the vessel steered, and of the length of time she was on that course all the way down through Camano Passage?

A. I know this much, that whenever I ordered a course——

Q. (Interposing) Answer the question; do not spar around.

A. I am not trying to spar around. [2800]

Q. I am afraid you do not understand the question. Read the question. (Last question read.)

(Testimony of William Charles Ansell.)

A. I couldn't say whether they kept an accurate one, or whether they kept one at all. I know that they took references and that they took bearings, and they did lots and lots of things when they were navigating the ship down there.

Q. And you would just point out a hill or landmark, or something like that, that you recognized, and tell them about it, isn't that right?

A. In one sense, yes, and in another sense, no. If they asked me—

Q. (Interposing) I thought you said it was a rainy night, and there were some other weather conditions—was it a dark night?

A. It was night, yes.

Q. And raining?

A. Raining.

Q. You came down through Caamano Passage?

A. Sure.

Q. What landmark did you point out to them on Zayas Island, coming down?

A. I pointed out the north end of the island, and then when we got down, squared away the south end of the island.

Q. Those are the two landmarks on Zayas Island, are they not?

A. Yes, sir.

Q. They took bearings on them, didn't they?

A. I presume they did.

Q. And recorded them?

A. I presume they did. [2801]

(Testimony of William Charles Ansell.)

Q. And at the same time they could get a cross bearing on Tree Point Light?

A. They may have been able to. I was looking dead ahead. I wasn't looking out back.

Q. You didn't pay any attention to Tree Point Light?

A. I had myself down the middle of the channel, and then all I had to do was keep in the middle of the channel and off the beach.

Q. You know very well, don't you, that if all you do is try to keep in mid-channel there you are going to hit this reef that the "Denali" stranded on?

A. Not necessarily, sir.

Q. But as you are going up from the southward, if all you are trying to do is keep in mid-channel you are almost certain to hit that reef, if you go up from anywhere to the southward of Zayas Island, or southward of the reef?

A. If you are too broad, you might, but if you are coming up on a regular course and have some sort of fix before you get there, you should not.

Q. That is right. You have to have a fix there so that you will be sure to give a berth to that reef, which dries at 12 feet, before you begin this mid-channel piloting up Caamano Passage, isn't that so?

A. You do not have to get a fix on the rock.

Q. You get a fix on the south end of Zayas Island?

(Testimony of William Charles Ansell.)

A. No, sir; you can get it from Dundas Island.

Q. All right; you are coming up from the south; you tell me the landmark that is on Dundas Island that you could get this fix on, on a dark night.

A. There is Lebo Island there. [2802]

Q. Prince Lebo Island, you are talking about?

A. Precisely. There is a thousand names for it; everybody has a name of his own.

Q. What landmark — the question was — well, read the question. (Question read as follows:

“Q. All right; you are coming up from the south; you tell me the landmark that is on Dundas Island that you could get this fix on, on a dark night.”)

A. That is not on Dundas Island. That is a small island just off of Dundas Island.

Q. Then answer the question.

A. It is answered.

Q. The question is, what landmark do you know of, which is a recognized landmark on Dundas Island, on which you could get a fix, as you call it, coming up from the southward, on a dark night.

A. Well, there is the hill of the island here. She has quite a big hill on Dundas that you can get some sort of a bearing on, if it is clear.

Q. It would have to be clear before it would be any good?

A. Certainly.

Q. This Prince Lebo Island is a flat, table top kind of an island, isn't it?

(Testimony of William Charles Ansell.)

A. Yes.

Q. Tell me how you would get a bearing on Prince Lebo Island?

A. That island is about 200 feet high.

Q. How long is it?

A. I really don't know the exact length of it. But if there [2803] are no shadows you will see probably the open water coming from Brown Passage, you will see the open water between it and Dundas Island, and naturally when you get up there you know you are there.

Q. What would you take a bearing of on a dark night, on Prince Lebo Island?

A. Any part of the island I could get.

Q. Well, you tell me the part.

A. Any part.

Q. That you took the bearing on?

A. Any part of it—the middle of the island.

Q. It is all flat all over the top; tell me what there is in the middle of the island that would be a distinguishing landmark that you could get an accurate bearing on.

A. Take the middle of the island—take the middle of it.

Q. You would have to see the whole island quite clearly in order to determine where the middle of the island was, in order to take this bearing in the dark, wouldn't you?

A. If you want to get down to seconds, and things like that, yes, but where you are going to

(Testimony of William Charles Ansell.)

pass a thing a mile off you do not have to be so accurate.

Q. Going up from the southward, how would you be going after you passed Triple Island Light, up through Caamano Passage; what would you be doing toward determining how the vessel was proceeding, say, over the ground?

A. The first thing I would have to know would be how far I was off Triple Island Light, how far out in Hecate Strait I was.

Q. Now, knowing that what would you do?

A. I would lay a compass course. [2804]

Q. What course?

A. A base course. I do not know. I haven't got the chart here to figure it out, and I cannot remember all those courses. I would have to remember a thousand and one courses, and I cannot do it.

Q. Can't you give approximately the course you would set on leaving this fix off Triple Island, to go up through Caamano Passage?

A. It would be about around West $\frac{3}{4}$ South, something like that.

Q. How far off Triple Island would you have this fix, going North through Hecate Strait and up Caamano Passage?

A. In the first place, coming out of there you have to——

Q. Wait a minute; the question calls for a definite answer. (Last question read.)

A. Now, where am I coming from?

(Testimony of William Charles Ansell.)

Q. From Seattle up through Hecate Strait.

A. That is, from the southward?

Q. How far would you leave Triple Island Light abeam?

A. About 12 miles.

Q. Take this position; what course would you be on arriving at Triple Island Light?

A. I cannot remember the course.

Q. Well, approximately.

A. I would not venture to approximate anything.

Q. Take this position, 12 miles off Triple Island Light, the ship lying abeam, what change of course would you make there to go up through Caamano Passage?

A. I don't know what course I would go up there. It is just a question whether I would change at Bonilla Island or [2805] where it is.

Q. What course would you set from this course off Triple Island up through Caamano Passage?

A. I would have to lay it out on the chart to find out.

Q. Can't you give us approximately the course?

A. I gave it to you once before.

Q. West $\frac{3}{4}$ South?

A. About.

Q. How long would you proceed on that course, West $\frac{3}{4}$ South, from the fix off Triple Island, to lead you up through Caamano Passage?

A. How long?

(Testimony of William Charles Ansell.)

Q. Yes.

A. That is hard to say.

Q. Would you stay on it all the way until you got through Caamano Passage, and way on clear to the northward?

A. I might only stay on that course half an hour, and then have to start hauling. The tides might start taking me out to the westward again and I would have to start to haul.

Q. Well, if it were a dark night you would not be able to tell whether it was necessary to haul one way or the other, would you, going from Triple Island up through Caamano Passage?

A. In a case like that——

Q. (Interposing) Would you? That calls for yes or no, and then you can explain.

A. Give it to me again, please. (Last question read.)

The question is, how dark the night was. As long as I could see something I could tell very quickly whether I was going to the left or going to the right. There is [2806] a string of islands running right along there that you can see, and lots and lots of times you do not have to get up to Dundas Island.

Q. I have asked you before about the landmarks, and you have given them.

A. Yes.

Q. After setting a course from a fix off Triple Island Light, to go up through Caamano Passage, it would be absolutely necessary for you, wouldn't

(Testimony of William Charles Ansell.)

it, to steer by compass until you could pick up one of these recognized landmarks that you have described and take a bearing on it, so you would know whether it was necessary or not to haul over, isn't that right?

A. I would have to steer by something, yes.

Q. Certainly; you would have to steer by compass until you could get in a position to take such a bearing, isn't that right?

A. Certainly. That is what the compass is for.

Q. If all you could see ahead of you on your bow was a kind of a blur of two islands, and you couldn't pick out any of those recognized landmarks, what would you do?

A. Stop it.

Q. You are a day time navigator, too.

A. Thank you; if you think so. I think I have had quite a lot of experience, if you want testimonials from anyone, as to what I have done during dark nights. I have traveled that country half of my life.

Q. At least the captain and the navigating officer of the "Louisville" were able to bring the ship down in rain and mist, through Caamano Passage, by using the compass, [2807] weren't they?

A. Yes; and I am telling you what the navigating officer told me; he said he wouldn't do that again.

Q. I do not care about individual comment. I am asking you if it is not a fact that they, steering

(Testimony of William Charles Ansell.)

by compass, had no trouble getting down through Caamano Passage.

A. Yes, sir; because I was there.

Q. And what you contributed was——

A. (Interposing) My local knowledge.

Q. Of the North end of Zayas Island?

A. My local knowledge.

Q. Your local knowledge consisted in knowing about the North end of Zayas Island?

A. Knowing it when I saw it.

Q. That is right.

A. In the middle of the night.

Q. And they did all the rest?

A. I don't know. The ship did all the rest.

Q. And got through safely on a rainy, dark night?

A. Sure.

Q. Any ship could get through there safely on a rainy and dark and hazy night if the compasses were in good condition, and if they steered an accurate course through there, like the "Louisville" did?

A. If they knew Zayas Island when they saw it, and knew Dundas Island when they saw it, yes.

Q. Now, on your direct examination you said that on the Inland Passage, or the Inside Passage, they did piloting. What did you mean by that statement?

A. Well, what does "piloting" mean? [2808]

(Testimony of William Charles Ansell.)

The Court: Well, you explain it. Counsel wants to know what you mean by using those words.

The Witness: Well, that is using your local knowledge over a country that you travel many, many, many times.

Q. On a dark night what does your local knowledge consist of, so far as being of any possible use to a navigator?

A. Knowing all the objects when you see them.

Q. Suppose that the night is so dark that sizeable, unlighted objects cannot be seen at a greater distance than two miles, and suppose the night is dark and hazy, and you were proceeding from a fix off Triple Island, say 10 or 11 or 12 miles off, to go up through Caamano Passage, what course would you set magnetic?

A. I would have to figure that out.

Q. What would you do under those circumstances?

A. As I stated before, I would lay out a base course, and if the distance is 12 miles to that certain point I would run 10.

Q. You would run by the course you laid down on the chart, wouldn't you?

A. Yes, sir. If it was two miles off—as long as I didn't get within two miles I would know darned well I would never hit it, so I would stop two miles short of there and then start to do some figuring.

Q. That is, you would lay down another course on the chart?

(Testimony of William Charles Ansell.)

A. If I could see something, yes, and if not I would probably stop until daylight and then proceed.

Q. You would not be able to lay down a course on the chart unless you had a compass in good condition so that you [2809] could know where, say, North magnetic was, isn't that so?

A. Well, after bringing a ship from Seattle—

Q. (Interposing) Answer the question, please, yes or no, and then you can explain, if you want to. Read the question. (Last question read.)

A. Yes. Now, can I explain that?

Q. Yes; go ahead.

A. After leaving Seattle, and I got that far, if I didn't know what my compasses were doing by that time there is something radically wrong with me. I have come about 350 to 400 miles, and made many, many changes in courses, and I have had plenty of time to check up my compasses. By the time I got there I should know what my compasses were doing.

Q. Suppose it just happens that all the courses you have been steering since you left Seattle were on approximately the same heading that your steamer had been laid up on for many months in a boneyard, then no azimuths that you took would give you any indication at all, would they, with respect to what the deviation was on a heading, when you suddenly swung, say, 30 degrees to the right; isn't that so?

A. No.

(Testimony of William Charles Ansell.)

Q. What?

A. That is providing I hadn't swung my ship.

Q. That is right. Now, if you took azimuths of bearing when the ship was lying alongside the dock, it is well known, is it not, among mariners, that such bearings are apt to be off, because they are affected by other steel vessels in the vicinity, and by iron on the docks, and the booms [2810] out, and that sort of thing?

A. They are liable to be off, yes.

Q. What amount of deviation on a compass do you regard as dangerous?

A. Anything; if I do not know it.

Q. All right. Now, if you do know it, what amount of deviation on a compass is dangerous?

A. None of it is dangerous, as long as I know it.

Q. I see; 95 degrees deviation wouldn't be dangerous, in your opinion, is that it?

A. As long as I knew it. What is the matter if I steer it north or south, as long as I know what the deviation on my compass is—but I never saw a compass with 95 degrees deviation, in my life.

Q. But there is some limit to your statement, then, isn't there? Is it your idea that if you have a bad compass, that simply because you know it is bad that that makes it good?

A. What do you call a bad compass?

Q. Well, one which has large deviations, or which is erratic on the same heading, or when you do not know what the deviations are at all on a

(Testimony of William Charles Ansell.)

large number of points or degrees. Don't those things make it a bad compass?

A. Not necessarily.

Q. You do not think those things make it a bad compass?

A. Not if I do not know it.

Q. Why not?

A. If I do not know it I do not have to adjust my compasses to find them. I swing my ship to find out, and then if I find a compass is "haywire", then I will ask for an [2811] adjustment.

Q. Why is an adjustment of compasses made, if you know, by compass adjusters?

A. To get them as near correct as possible.

Q. Exactly.

A. That is all.

Q. What the compass adjuster does is that he changes the correctors and the magnets, and the finders bars, and the horizontal balls——

A. Everything.

Q. And the various other things—and the binnacle, so that the deviations of the compass are removed, excepting, we will say, about half a degree, or a degree, isn't that so, ordinarily?

A. Ordinarily, if they can get it down to two degrees they think they have done a fair job.

Q. That is what a good compass adjuster does, isn't it?—Well, isn't that so?

A. That makes a fairly good compass out of it, yes.

(Testimony of William Charles Ansell.)

Q. If you have anything other than that you have a bad compass, but your idea is that because you know it is bad, and the extent to which it is bad, that that makes it good, is that it?

A. No, sir.

Q. Then I do not understand your testimony. Can you make any further explanation of that?

A. You are getting too technical for me.

Q. I was trying to be simple. Now, what does good and safe practice require with respect to a master, the navigating officers and watch officers, taking a ship on a voyage [2812] from Seattle up to Alaskan ports, so far as—well, say as far as charts are concerned?

A. Well, it is advisable to have, as near as possible, all of the charts that cover the territory you are traveling over.

The Court: I do not recall this phase of seaworthiness being gone into on direct examination; seaworthiness in any respect other than with regard to the compass. I do not recall any such direct examination.

Mr. Ryan: He was asked about what charts—

The Court: He was not asked anything about charts, as I recall the testimony of this witness.

The Witness: This is the first I have been asked, Your Honor.

Mr. Ryan: I do not want to go beyond the direct examination. All right.

(Testimony of William Charles Ansell.)

Q. (By Mr. Ryan) Now, what does good and safe practice require that an ordinarily prudent master, navigating officer, or the watch officers, that they take on a steamer sailing on a voyage from Seattle to Alaskan ports, Metlakatla in particular, among others, so far as tables are concerned?

Mr. Bogle: As far as what are concerned?

Mr. Ryan: Tide tables, and that sort of thing.

Mr. Bogle: I object to that, Your Honor, as not being proper cross examination. We did not cover any of that subject.

Mr. Ryan: They went into the tide tables.

The Court: You asked him something about the variation of the actual condition from that indicated by the Pacific [2813] Coast Pilot, or some other kind of Pilot.

Mr. Bogle: Yes; I did ask him that question, and that was incidentally mentioned.

The Court: If the cross examination of counsel indicates that he is leading to an inquiry on that subject, then the question will stand.

Mr. Ryan: I am, Your Honor.

The Witness: Now, what is that question, please?
(Question read as follows:

“Q. Now, what does good and safe practice require that an ordinarily prudent master, navigating officer, or the watch officers, that they take on a steamer sailing on a voyage from Seattle to Alaskan ports, Metlakatla in particular, among others, so far as tables are concerned?”)

(Testimony of William Charles Ansell.)

A. Well, it is natural for the ship to have her own library, which is bought and paid for by the company, which includes Coast Pilots, charts, tide tables, current tables, azimuth mirrors, and what have you—anything pertaining to the navigation of the ship.

Q. What Coast Pilots would an ordinarily prudent master and navigator take with him on a voyage to Alaska, from Seattle?

A. Going outside or inside?

Q. Going up through Hecate Straits and Caamano Passage, to Metlakatla?

A. Well, if he had the Pacific Coast Pilot from—well, No. 1 and No. 2, and if he also has the Canadian Coast Pilot, No. 1 and No. 2, and such other addenda that may issue, he would have, as far as Pilots—that is all [2814] he would need.

Q. You are referring to British Columbia Coast Pilot Volume No. 1 and Volume No. 2?

A. Yes.

Q. Issued by the Canadian Government?

A. Yes.

Q. And United States Coast Pilots, Volume 1 and Volume 2, issued by the United States Hydrographic Office of the Navy Department of the United States, isn't that so?

A. Those are the ones I am referring to.

Q. What other tables would *they* ordinarily prudent master have with him on such a voyage?

The Court: Relating to tidal currents?

(Testimony of William Charles Ansell.)

Mr. Ryan: Yes, Your Honor; relating to tides and currents.

The Witness: The American tide tables, current tables, and the Canadian.

Q. You mean by the current tables, the current tables of the Pacific Coast, North American and Philippine Islands, 1935, issued by the United States Department of Commerce, isn't that right?

A. The same thing.

Q. And the American Tide tables, you mean for the Pacific Coast of the United States, issued by the United States Government?

A. Yes.

Q. And the Canadian tables are issued by the Canadian Government for the Pacific Coast of the United States?

A. Yes, sir.

And you get them free. [2815]

Q. Now, the Coast Pilot refers to certain tide tables, refers to certain charts for further information with respect to tides and currents, and that is supplementary information?

A. They do.

Q. What are those? Would you take those charts along?

A. I told you before that I would take all the charts requisite, covering the territory.

Q. One of those charts would be Hydrographic Office Chart No. 2828, wouldn't it?

A. Possibly, yes.

(Testimony of William Charles Ansell.)

Q. I am not asking you about possibilities; I am asking you what an ordinarily prudent master would take with him on a voyage to Alaska, going from Seattle through Hecate Strait and Caamano Passage?

A. He would have that chart; yes.

Q. He would have to have that chart, if he were prudent.

A. He would get that data that you are referring to.

Q. If he didn't have that he would not have a supplement to the tide tables to that area, or currents at that place?

A. No.

The Court: Mr. Ryan, will you get right at what you want to get at on this subject of the currents and the tides?

Mr. Ryan: Yes; that is exactly it, Your Honor.

The Court: Get at it and ask him what you want to know about that subject.

Q. (By Mr. Ryan) Do not those documents that you have described constitute the best available information that [2816] an ordinarily prudent master would have with respect to tides and currents, etc., up through Hecate Strait and Caamano Passage and Dixon's Extrace?

A. It is the best that you can get, but they are not correct in lots of places.

Q. And you would use them, wouldn't you?

(Testimony of William Charles Ansell.)

A. I would use them up to the point where I found out they were wrong.

Q. Can you point out specifically wherein any of those books are wrong, insofar as Dixon's Entrance, etc., are concerned?

A. Not the whole of Dixon's Entrance, but I can other places in the tide tables; I can show you where they are wrong.

Q. Let us limit it to Dixon's Entrance, or Caamano Passage, Chatham Strait, or Hecate Strait; tell me any place in any of those places where what is said by the Government is wrong.

A. I would have to be there at the time to prove it, whether it is right or wrong. I have to take the assumption that the book is right until I get there.

Q. Was anything found wrong with these charts or tide tables, or other supplementary information referred to, when the "Louisville" was there, being navigated down through there?

A. Several times, several things. [2817]

Q. Now one. That is Lord Rock, for one. How about that?

A. The light was not functioning according to what the book says. There were several places along the line that were the same way. Different things like that happened.

Q. That was Lord Rock, was it?

A. It was a light, but it was not functioning according to the way that it was in the book.

(Testimony of William Charles Ansell.)

Q. That Lord Rock is up in Chatham Strait, or the main passage to the Eastward of Dundas Island, is it not?

A. Yes. If you keep going you run right into it pretty near.

Q. It is on the inside passage to Alaska from Seattle, is it not?

A. It is in Dixon's Entrance, yes.

Q. All right. Now, you tell me any specific thing that you ever found wrong that is stated in the tide tables of the United States Government, or the Canadian Government, or the current tables of the United States Government, or in the current information given by the Canadian Government, or in this supplementary tide and current table on Chart 2828 supplementing the tide tables and current tables?

A. Well, I have not the book with me, and I cannot exactly remember the day or the date, but I have seen the difference in Seymour Narrows as much as thirty minutes between the Canadian tables and the American tables.

Q. And is there anywhere else where you found such a discrepancy?

A. Well, you go up through Granville Channel and Seymour Narrows, and you will see on the chart that it says that [2818] the tides meet here.

Q. And then what about the difference if there is a wind?

(Testimony of William Charles Ansell.)

A. And if there is some sort of a wind or there has been a wind you meet the tide five miles down the line or five miles up the line.

Q. Now, Granville Channel and Seymour Narrows are both on the inside passage, aren't they?

A. Yes, sir.

Q. So in the absence of definite knowledge that you had unusually strong winds preceding the time that you were interested in, or that you have had unusually high tide or tides beyond those predicted in the tide tables, conditions would be normal and as shown in the tide tables and on the Chart 2828, isn't that so?

A. Oh, well, they are never accurate.

Q. It would be inappreciable in the absence of those things that I have stated.

A. Well, they are never accurate. I never found them accurate to the minute.

Q. Well, within a minute or two or three, say.

A. Well, that means a whole lot sometimes.

Q. Now, when does the tidal stream turn between Dundas Island and Cape Fox with relation to, say, the time of high water at Prince Rupert?

A. I would have to figure that out.

Q. You don't know, do you?

A. Not right offhand, no.

Q. If I gave you a pad could you figure it out?

A. I would have to get some books.

Q. What books *would have* to use? [2819]

(Testimony of William Charles Ansell.)

A. I would have to use the tide tables, and so forth.

Q. You would just dig it out of the current and tide tables, is that it?

A. And I would have to consider the time that I got there and the weather. In fact, I have got to be right there at the spot to figure it out, whether she is right or whether she is wrong.

Q. All right. Now, when is there slack water—that is, when does the ebb begin at a point, say, five miles south true from Prince Lebo Island, say, taking the time of one hour after high water at Port Simpson?

A. I would have to figure that out in the same way.

Q. Where would you figure that out from?

A. Probably from Prince Rupert or Wrangel Narrows—some of the bases that are around there.

Q. You would either take the tide table or Chart 2828?

A. Yes, sir.

Q. Or the current tables?

A. Or the current tables, yes, sir.

Q. And you would figure that out?

A. Yes, sir.

Q. And that is what you would rely on?

A. No, I would not say that I would rely on that. It would give me a base to work from.

Q. And the only thing that would make you

(Testimony of William Charles Ansell.)

change from that base would be the conditions that you have described before?

A. Yes, sir.

Q. That is, the weather and the wind?

A. Weather conditions, and what stage of the tide it was, [2820] and how high the tide was at Prince Rupert, and how high the Skeena River was, whether there had been any freshets or anything like that around there.

Q. Now, take this tide. If the tide were a little higher than that predicted, that would merely increase the force of the current. It would not change the direction of it, would it?

A. Well, it depends on which tide it is, ebb or flood or what.

Q. Well, either one. If nothing happens excepting that the tide is higher than it was first predicted, there would be no change excepting in the force of the current, isn't that so?

A. You would have that much more force.

Q. But the direction would be the same, wouldn't it?

A. Oh, not necessarily.

Q. Why not? If nothing happens except that the height of the tide is increased.

A. Well, providing that the current is running normal and is running as it was predicted, but it does not always do that.

Q. And the tidal currents do run normal and as predicted excepting when these unusual conditions

(Testimony of William Charles Ansell.)

of weather and unusual heights of tide occur; isn't that so? Everybody knows that, isn't that right?

A. Not according to the chart. The tides on the Pacific Coast here have changed materially in the last two years, and there is no mention of it on the chart here.

Q. Well, you know that this current diagram on Chart 2828 is referred to in the tide and current tables as a [2821] supplement of them, is it not?

A. And it tells you that this is the position—the maximum that it should go, but it doesn't say that they do so. It just gives you an idea from their observations, and their observations, some of them have been taken twenty-five years ago. There have been no observations made up in that country for many years.

Q. Now, don't go outside of the record. Those charts show on there themselves that they are taken from the very latest available data, don't they?

A. Yes, sir.

Q. Of the United States Government, and the Canadian Government and the British Admiralty, do they not?

A. That is what it says there, but it is not so.

Q. Doesn't it say so on that chart?

A. Yes. It says it has been corrected and taken from the latest data had, but it doesn't say when the data was taken.

Q. Well, if you have the latest up to date charts, you have the latest up to date information that any

(Testimony of William Charles Ansell.)

of the governments which have regular hydrographers and all that sort of thing are able to give, isn't that so?

A. Yes, that they are able to give, but if there are no surveys made there how are you going to get it?

Q. Have you ever reported to any government or to any hydrographer any differences that you ever found in the tidal currents in Caamano Passage or in that vicinity?

A. No, sir, I have not.

Mr. Ryan: That is all. [2822]

Redirect Examination

By Mr. Bogle:

Q. Captain, do you know the date on Chart 2828?

A. No, sir, I don't know the date. I would not—

Q. Do you know whether or not any American Surveys are made of Canadian waters?

Mr. Ryan: Just a minute. I object to that.

Mr. Summers: That is not proper redirect examination and, further, it is not the best evidence.

Mr. Bogle: They brought this out on cross, Your Honor.

Mr. Ryan: No, we did not. The Court shut me off on the charts, and I didn't pursue that any further except the tiny part that related to the supplemental tide table.

(Testimony of William Charles Ansell.)

The Court: The diagram on Chart 2828 was gone into as being a part of the addenda of the tide tables.

Mr. Ryan: Yes, the part at the bottom, but we didn't ask him any question with respect to whether that was a necessary chart to be used and to be kept on ships.

The Court: Well, it was gone into in connection with supplying charts on ships and as a part of the addenda of the tide tables. Now, if the question is directed to that, the witness may answer.

Mr. Bogle: That is what it is directed to.

The Court: Read the question.

Q. (By Mr. Bogle) Do you know that, Captain?

Mr. Ryan: Just a minute. I understood him to answer no to that question that was asked him.

The Witness: I have not answered yet. I don't know [2823] what the question is yet. You have been talking among yourselves, and I haven't got the drift of the question yet.

The Court: Read the question.

(Question read as follows:

“Do you know whether or not any American surveys are made of Canadian waters?”)

Mr. Summers: I renew my objection on the ground that this would not be the best evidence.

The Court: The objection is overruled.

Mr. Summers: Exception.

The Court: Exception allowed.

(Testimony of William Charles Ansell.)

A. I don't know of any American vessels doing any survey work in Canadian waters. There used to be a couple of British boats out here many years ago that did that, the "Icarus" and the "Algeria", part of the British Navy, that did that.

The Court: That is sufficient. The answer is sufficient.

Q. (By Mr. Bogle) How many years ago?

Mr. Ryan: That is objected to. I mean, that this man obviously has no knowledge concerning that. Let me ask you, did you see these boats?

The Witness: Yes, sir.

Mr. Ryan: Which boat did you see?

The Witness: Both of them.

Mr. Ryan: He has not connected it up with the Canadian Government. I object to him testifying on speculative matters like this. That is not the best evidence. [2824]

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) How many years ago, Captain?

A. They were out here when I first came out in 1896, '97, '98 and '99.

Q. Captain, in considering the data contained in the various books referred to by Mr. Ryan, I will ask you if you had in mind and you took into consideration this statement on page 363 of the United States Coast Pilot, Part I—

(Testimony of William Charles Ansell.)

Mr. Ryan: (Interposing) Now, if the Court please, I object to that being read in this way by counsel, first, on the ground that it is leading, and, second, on the ground that it is not proper redirect. This man was asked on direct about tide tables and that sort of thing. If they wanted to go into that they should have gone into it on direct. All I did was to cross examine him on that subject that they went into, and that was all.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) This statement on page 363 of the United States Coast Pilot No. 1, "In navigating coasts where the tidal range is considerable special caution is necessary. It should be remembered that there are indrafts into all bays and bights, although the general set of the current is parallel to the shore. The turn of the tidal current offshore is seldom coincident with [2825] the time of high and low water on the shore". And this further statement, "Current arrows on charts show only the usual or mean direction of a tidal stream or current. It must not be assumed that the direction of the current will not vary from that indicated by the arrow. In the same manner the velocity of the current constantly varies with circumstances, and the rate given on the chart is a mean value, corresponding to an average range of tide. At some stations but few observations have been made". Do

(Testimony of William Charles Ansell.)

you take that into consideration in considering the accuracy of this data?

A. That, and also what is in the British Columbia Pilot. They have practically the same thing. I think you will find it on pages 7 and 8 and then down here on page 202 and 264. I have studied that thing pretty thoroughly during my time running up and down that country.

Q. Captain, what was your capacity on the "Louisville"?

A. As a commercial pilot.

Q. Were you paid for your services?

A. Sure.

Q. Were there good navigators on that ship?

A. They were splendid; the best in the world.

Q. And with reference to inland waters, such as Caamano Passage, to what extent did you advise them as to the course?

A. Just to put her in the middle, and I said, "There she is, gentlemen", and then they brought her down through there, or I did. I stood up there until we got down towards the south end of the island. They got a little [2826] nervous and I said, "We will haul her to the left a little, and I know that we are pretty well clear now", and away we came.

Q. One question, Captain, that you answered on cross with reference to the steel and iron and magnetic cargo on various docks at Seattle. Do you

(Testimony of William Charles Ansell.)

know whether there is any such cargo or any such structure on the Arden Salt Dock?

Mr. Summers: Just wait a minute.

A. No, sir, I do not.

Mr. Summers: As of what date?

Q. (By Mr. Bogle) Or at the other docks in the City of Seattle, on May 13, 14 and 15, 1935?

A. No, sir. I wasn't around the docks, and I cannot tell you whether there is anything on them of that character or not.

Q. Now, in circumstances where you have a ship swung, or the master considers it necessary to swing the ship for compass compensation by a shore adjuster, do you have that done when the ship is loaded or light?

Mr. Ryan: We object to that on the ground that it is not redirect examination. He went into this fully on direct, and I merely crossed him on that.

The Court: Objection overruled.

A. Well, invariably we adjust the compass when they are light—when the ship is light, I should say.

Mr. Bogle: That is all, Captain. [2827]

Recross Examination

By Mr. Ryan:

Q. What allowance was made for current in setting the "Louisville's" course down through Caamano Passage, if you know?

A. I was on a pretty big ship, and a fast ship, and——

(Testimony of William Charles Ansell.)

Q. (Interposing) The question just calls for an answer as to what allowance was made for current.

The Court: That is right.

Q. (By Mr. Ryan) If you know.

A. I don't remember.

Q. Do you know what allowance you made for current on any occasion that you went through Caamano Passage, and the name of the ship?

A. The only allowance that I made was—I cannot say what the name of the ship or the names of the ships were that I have gone through there with where I have had to haul one way or the other, and how much that was. It is years ago in some instances that I have gone through there.

Q. I see.

A. And then I have sometimes gone through with a tow and the current will get hold of your tow and set her down, and naturally you have got to keep going and pull it to the right or left to keep her from bumping some object.

Q. Assuming that Pilot Obert has testified in this case that based on his judgment as an Alaskan experienced pilot of twenty-nine years experience he made an allowance of three-eighths of a point for current going up through Caamano Passage, would you say that that was a [2828] prudent and safe allowance, or not?

A. Not being there, and not knowing the position that he was in when he started out—if he only made one degree change, it might have been enough. There are lots of tides running up in these waters

(Testimony of William Charles Ansell.)

where we make a couple of degrees change, and he took three-eighths of a point and, of course, as I say, if I had been there and I had seen the circumstances—If it had been me I might have hauled her off two points and put her ashore on Dundas Island. But the thing is that you have got to be there. That is where your local knowledge comes in. You have got to be there, right on the ground, to see these things before you act and so that you can act intelligently.

Q. Suppose the sea is calm and everything is apparently normal, and the ship had a fix ten and a half miles distant abeam from Triple Island Light, and then she sets a course North $\frac{3}{4}$ West Magnetic—

A. (Interposing) Yes.

Q. (Continuing) —by standard compass, so that three-eighths of a point will be allowed for set of the current in Caamano Passage, would you say that the navigator who did that was careless or not?

A. No, he was not.

Mr. Bogle: Just a minute. I object to that, if Your Honor please, as not being proper recross, and there was nothing on redirect that called for that question.

The Court: The objection is overruled. More particularly so, because of the witness' answer just made. [2829]

Mr. Ryan: That is all.

Mr. Bogle: That is all, Captain.

(Witness excused)

(Testimony of Michael M. Jensen.)

Mr. Bogle: I will call Captain Jensen. Take the stand, Captain.

MICHAEL M. JENSEN,

called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. What is your name?

A. Michael M. Jensen.

Q. You will have to speak up.

The Court: Is it J-e-n-s-e-n?

The Witness: Yes, sir.

Q. (By Mr. Bogle) You will have to speak up quite clearly, Captain.

A. Yes, sir.

Q. Where do you reside, Captain?

A. Seattle.

Q. What is your business?

A. Master mariner.

Q. What licenses do you hold, Captain?

A. An unlimited master's for any ocean; pilot for Southeastern and Southwestern Alaska, and Puget Sound, and all ports and places along the Pacific Coast.

Q. How long have you been seafaring, Captain?

[2830]

A. Oh, I started to go to sea about 1890.

(Testimony of Michael M. Jensen.)

Q. How long have you held a master's license?

A. Since about 1906 or '07.

Q. And how long have you held a pilot's license for Southeastern and Southwestern Alaska?

A. Not very long.

The Court: Could you give us any idea, Captain, of the time?

The Witness: About two years.

Q. (By Mr. Bogle) Have you had any experience—what has been the extent of your experience in Alaska waters?

The Court: As a navigating officer?

Mr. Bogle: Yes. Thank you, Your Honor.

Q. (By Mr. Bogle) Yes, as a navigating officer in Alaskan waters.

A. As a navigating officer?

Q. Yes.

A. As an officer and master about seventeen years—sixteen or seventeen years.

Q. Have you had any offshore experience, Captain?

A. Some.

Q. With what company?

A. The American Mail Line.

Q. On what run?

A. On the Seattle-Oriental run—China, Japan and Manila and India.

Q. With what companies have you been connected in navigating ships as an officer in Alaskan waters?

(Testimony of Michael M. Jensen.)

A. The Admiral Line, and previous to that the Alaska Coast [2831] Company, and the Pacific Steam Whaling Company, which was later absorbed and called the Admiral Line. It was all merged into one company.

Q. You have never been employed by the Alaska Steamship Company?

A. No, sir.

Q. And how long since has it been that you have been a master in Alaskan waters?

A. Last year.

Q. And what has been the nature of your piloting, Captain? What type of vessels have you been on as pilot—that is, in Alaskan waters?

A. On merchant vessels and some navy ships and navy vessels; cruisers and destroyers.

Q. That was in Southeastern and Southwestern Alaska?

A. Yes, sir.

Q. Both?

A. Yes, sir. On the Navy vessels only in Southeastern Alaska.

Q. Now, Captain, what has been your experience navigating the waters of Dixon's Entrance and Hecate Straits and the vicinity of Caamano Passage?

A. Well, you mean the length of my experience and the number of times?

Q. Yes; the general extent of your experience in navigating those waters.

(Testimony of Michael M. Jensen.)

A. Well, as I said before, I have been operating and running to Alaska as a master and pilot—as master and pilot approximately thirteen or fourteen years, and the other experience was as first officer and second officer. [2832]

Q. But, Captain, I am trying to get that limited to the experience that you have had in these particular waters of Hecate Straits and Caamano Passage and Dixon's Entrance. How many—what portion of those years have you navigated through those particular waters?

A. Well, going across Dixon's Entrance—crossing Dixon's Entrance to go to Ketchikan, why, I made a round trip every two weeks or so.

Q. And how often have you been up through Hecate Straits and Caamano Passage?

A. Well, I don't know. It is quite a number of years ago. I should say ten or twelve or fifteen times.

Q. Did you ever have any fishing experience in those waters?

A. No, sir.

Q. Captain, do you feel that you are able from your experience to state what the set of the tide is—the tidal current is in Hecate Straits west of Dundas Island and south of Zayas Island?

A. No, I cannot say anything with accuracy.

The Court: Well, counsel wanted to know if you were able to make any statement which would be of any value or which would be material here on that question.

(Testimony of Michael M. Jensen.)

Q. (By Mr. Bogle) From your own experience.

A. Well, in my own experience, running back and forth there, I found that most of the time the current is setting in a westerly direction—that is, from west to southwest, and maybe south of that. It does not run in a straight direction.

Q. Is that the direction of the set on an ebb tide? [2833]

A. Yes, sir.

Mr. Ryan: I object to that as leading, Your Honor.

Mr. Bogle: No, it is not.

Mr. Ryan: He has done this every time.

Mr. Bogle: No, I have not.

The Court: Objection overruled. In this connection, in the Court's view, it is permissible.

Mr. Bogle: I am just trying to expedite this.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) What is the direction on an ebb tide?

A. The direction on an ebb tide is westerly—southwest to west and from south to southwest, and from a little north to west. It varies.

Q. Captain, in the vicinity of the waters westerly of Brown's Passage, what is the set of the tide on an ebb tidal current?

A. Approximately westerly—from west to southwest, as I said before.

(Testimony of Michael M. Jensen.)

Q. How does the strength and the direction and the time of the currents in that vicinity coincide with the predictions on the chart and in the Coast Pilots?

Mr. Ryan: Just a minute. I object to that unless the witness *is* shown that he has made some observation there. Unless he shows that he has made some observation there I will object to it.

Mr. Bogle: I didn't quite finish my question, Mr. Ryan. [2834]

Q. (By Mr. Bogle) If you know.

Mr. Ryan: Well, that is objected to on the grounds that the words "If you know" do not add anything. The witness has not been shown to have made any observations there that would qualify him to give an answer to that question.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

A. Well, I found that the velocity, as well as the direction, varies very greatly in the different places along in a distance there of ten or fifteen miles.

Q. Have you been through this passage at night?

Mr. Ryan: Just a minute. Will you please read that answer, Mr. Reporter?

(Answer read)

Q. (By Mr. Bogle) What do you mean by that distance, Captain? What territory does that cover?

A. Well, that would cover part of the territory from Triple Island to Dundas Island, and off towards Caamano Passage.

(Testimony of Michael M. Jensen.)

Q. Have you ever been through Caamano Passage at night?

A. Yes, sir.

Q. What would you say as to the conditions of visibility at night along the Dundas shore—along the shore of Dundas Island?

A. Well, it depends on the night. If the night is overcast and cloudy, why, it would be rather dark. But if it is clear, why, the visibility is rather good during the night except, you might say, towards morning. Before [2835] sunrise, maybe an hour or an hour and a half or two hours it is quite often, especially in the spring and summer time—quite often there is a haze hanging along the beach, and it is rather hard to get any bearings of anything, or any proper fix of anything.

Q. Well, Captain, in navigating these Alaskan waters and the narrow passages, or passages such as Caamano Passage, to what extent do you depend upon your compasses or dead reckoning courses?

A. Well, you depend very little on the compasses after you pick up a known headland.

Q. After you pick up a known headland how do you use that in your navigation?

A. Well, if necessary we will haul the ship either one way or the other—if she is too close to one shore we will haul her away from it, and if too close to the other shore, we will haul it the other way.

(Testimony of Michael M. Jensen.)

Q. Is it customary in Alaskan waters to put those changes that you have made to rectify your course in your log books?

A. No; no.

Q. Captain, are you familiar with the method, or custom, if any, with reference to compass adjusting in Seattle?

The Court: Reserve that answer until after the short recess that we are about to take. We will take a ten minute recess.

(Recess)

Mr. Bogle: Will you read that question?

(Question read) [2836]

Mr. Ryan: I object to that.

A. There is not any custom——

Mr. Ryan: (Interposing) What did you say?

A. There is not any custom, as far as I know.

Q. (By Mr. Bogle) Do you know of any steamship company, operating passenger or freight vessels, in the Port of Seattle, or operating out of the Port of Seattle that have their compasses adjusted at any regular or fixed time?

A. No, sir.

Q. What is the practice with reference to compass adjusting?

Mr. Ryan: I object to that. He just said that there was not any practice.

Mr. Bogle: He said that there was no custom.

A. The practice is——

Mr. Ryan: (Interposing) Just a minute.

(Testimony of Michael M. Jensen.)

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

A. The practice is that if in the master's opinion it is necessary to have the compasses adjusted he will require that to be done.

Q. Captain, in your experience as a shipmaster, under what circumstances would you request compensation of compasses or the adjustment of your compasses by a shore adjuster?

A. If the compass appeared sluggish, or appeared to be out of repair—for instance, if there was a bubble in it, or something like that, I would request to have it repaired and have it adjusted at the same time. Or if [2837] there had been any extensive alteration made to the ship, in the case of repair work around the pilot house, with excessive steel or iron, and so on, why, I would request to have the compass adjusted before the ship went to sea.

Q. Assuming that the master of the "Denali" checked his compasses either by running magnetic courses, or by taking cross bearings, or checking his headings when he was alongside of the dock—the heading of which was known—and made a check on the following headings, West Northwest, Northeast by North $\frac{1}{2}$ North, East Northeast, West by North $\frac{1}{2}$ North, North Northwest, East by South, East Northeast, Southeast by East, West Southwest and South Southeast, and found no error of as much

(Testimony of Michael M. Jensen.)

as one degree on any one of those headings, in your judgment should he as a shipmaster have requested his ship to be swung, and his compasses adjusted or compensated by a shore adjuster?

A. No, sir.

Q. Now, Captain, assuming that this ship, when completely loaded, had a cargo on her well deck forward, consisting in part of boilers, road scrapers, tractors, gas engines, and possibly other cargo of magnetic qualities, in your experience would you anticipate that that cargo would have any effect upon your compasses?

A. Well, it very likely would.

Q. As a practical matter how would you determine whether *not* not such character of cargo did or did not affect your compasses?

A. Why. I would take the ship's heading in her loading [2838] berth before she started to load, and watch the heading of the compass during the process of loading. And when the loading was finished I would give her the final check. If no material change was there I would consider that the cargo had made very little difference, if any, to the compasses. And then when she got out of her loading berth, out in the bay or harbor, or whatever you might call it, why, I would try to get bearings on the different headings, either by azimuths or by known points on shore.

Q. Could you by that method determine the amount of effect which the cargo would have on the compasses?

(Testimony of Michael M. Jensen.)

A. Yes, sir.

Q. Well, assuming by the use of that method you could determine the errors, if any, in a standard compass, then how would you determine the error, if any, in your steering compass?

A. By comparison.

Q. By comparing them in what way?

A. Comparing the steering compass with the standard compass.

Q. On what heading?

A. On all the headings where they are taking bearings.

Q. Captain, with a magnetic cargo such as I have described, would you expect it to have the same effect on both compasses?

A. No, sir.

Q. Upon what compass would you expect it to have the most effect?

A. On the steering or wheel house compass.

[2839]

Q. Why?

A. Because it would be closer to any cargo that might be loaded on the ship.

Q. Captain, assuming that the master and the second officer of the "Denali", after loading this deck cargo, while in the vicinity of West Point swung the ship over fourteen points, from West Southwest to Northeast, and that on the headings from West Southwest to North the errors were practically zero—in other words, there was nothing

(Testimony of Michael M. Jensen.)

to exceed half a degree—and that from North to Northeast there was a slight error with a maximum of two degrees on Northeast, would you consider that the compasses of that ship were in proper condition for the voyage from Puget Sound to Metakatla, Southeastern and Southwestern Alaska—a north bound voyage?

A. Yes, sir. I would consider them in very good shape.

Q. Captain, if you knew the amount of your deviations, what extent of deviation in your judgment would be dangerous?

A. If the deviation is known, well, I don't know that any extent would be dangerous.

Q. From your experience in the Alaska trade what is the most magnetic cargo that you handle? What cargo has the most effect upon your compasses?

A. A load of salmon in tins, or a load of coal oil in tins, or gasoline in tins, in my experience has affected the compass more than anything else.

Q. Now, is that north bound or south bound cargo?

A. The salmon is south bound. [2840]

Q. And when you load such cargo, how do you determine the effect of that cargo upon your compasses?

A. By observation; by azimuths, and so on.

Q. In your experience what is an average deviation caused by a cargo of canned salmon? Not one

(Testimony of Michael M. Jensen.)

of excessive deviation, but the average deviation that you will get?

A. Oh, that varies considerably, due to the fact that in some cases the cargo of salmon is further away from the standard compass in some ships than what it would be in others.

The Court: Give us some limit——

Mr. Bogle: (Interposing) Yes.

The Court: (Continuing) ——of variation.

Mr. Bogle: Yes.

The Court: If you can.

A. I should say that it varies from, say, four or five degrees up to seven or eight, or maybe nine degrees; maybe more in some cases.

Q. (By Mr. Bogle) And if you know that deviation is your navigation south bound dangerous?

A. No.

Q. Are there any facilities in Alaska—are there in Alaska any aids for compensating the compass?

A. No, not that I know of.

Q. I mean, changing the magnets to compensate them?

A. No.

Q. Captain, referring back for a minute, you said that you had some experience piloting naval vessels, didn't you?

A. Yes, sir. In the last couple of years I have had experience with several of them. [2841]

Q. What is your position aboard the naval vessel when you are piloting that vessel?

(Testimony of Michael M. Jensen.)

A. Well, I am there as a pilot.

Q. And what authority do you have, or what duties do you have?

A. My duty is to pilot the ship through narrow waters.

Q. Well, they have navigating officers aboard, don't they?

A. Yes, and they have more than one as a rule. They have a whole flock of them on some of them.

Q. Captain, in navigating the narrow passages, such as Caamano Passage, in Alaska, who directs the course and change of course that the vessel should take in going through those waters?

A. The pilot.

The Court: You are speaking with reference to naval vessels?

Mr. Bogle: Yes, with reference to naval vessels.

Q. (By Mr. Bogle) The pilot, you say?

A. Yes, sir. But I have never been through Caamano Passage with a naval vessel, but in any other passage like it, why,—

Mr. Ryan: (Interposing) I move to strike out the answer.

The Court: The Court will take that explanation made by him as part of the answer. Motion denied.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) Captain, have you had experience with naval vessels where you had to navigate them through waters without any charts at all? [2842]

(Testimony of Michael M. Jensen.)

A. Yes, sir.

Q. And when you have no charts, of what use are your compasses?

A. They are of no use.

Q. Just tell us what that experience was on a naval vessel.

A. How is that?

Q. Just tell us what experience you had of that kind on a naval vessel.

Mr. Summers: We object to that as immaterial, and irrelative. Ask him something specific.

Mr. Bogle: Well, this is specific. This is something that you wanted, and this is specific.

The Court: I think it ought to be sustained.

Mr. Bogle: I think that is all.

Cross Examination.

By Mr. Ryan:

Q. Do you regard a passage that is two and a half miles wide as a narrow channel?

A. Yes, sir.

Q. What is the designation of a narrow channel under the rules of the road?

A. Well, anywhere from 100 feet up to two or three miles.

Q. Do you think that a passage two miles wide is a narrow channel under the rules of the road?

A. Yes, sir.

Q. Are you familiar with the rule of the road that requires you to stay to the starboard side of a narrow channel?

(Testimony of Michael M. Jensen.)

A. Yes; to the right side. [2843]

Q. To the right hand side?

A. Yes, sir.

Q. And you think that that applies where the channel is two miles wide?

A. I do.

Q. If I suggest to you that 600 feet is the designation of a narrow channel, you are much surprised, is that it?

A. Well, we have rules here on Puget Sound that are not in the rules of the road, that all ships going down the Sound keep to the right or star-board side of the channel and the other ones coming up the Sound keep to the other side of the channel to eliminate chances of collision.

Q. But Puget Sound is not a narrow channel, is it, Captain?

A. No, it is not a narrow channel. That is what I mean to specify, that although Puget Sound is not a narrow channel, still——

Q. (Interposing) But the term “narrow channel”——

Mr. Bogle: Wait a minute. He has not finished his answer.

The Court: Finish your answer.

A. But still we hold to the rules to keep to the right.

Q. (By Mr. Ryan) Is not the ordinary designation of a narrow channel among mariners a channel that is 600 feet wide?

(Testimony of Michael M. Jensen.)

A. Not necessarily.

Q. What is the designation, if you know?

A. As I said before, anywheres from 100 feet to two or three miles.

Q. You do not know of any rule that says that, do you? [2844]

A. No, I do not.

Q. Now, how many times have you been through Caamano Passage?

A. Oh, I don't know; ten or twelve times I should say; maybe a little more and maybe a little less.

Q. Give me the names of the ships that you were on going through Caamano Passage.

A. Well, there will be many of them.

Q. What?

A. I might have been on a different ship each time that I went through.

Q. Now, I am not asking you to guess or speculate, Captain. If you don't know, just say that you don't know.

The Court: The question is to recall such names as you are able to recall.

A. Well, I have been on the Steamer "Bertha".

Q. You have been on the Steamer "Bertha"?

A. No, not on the "Bertha", but on the "Jeanie".

Mr. Bogle: That is spelled "J-e-a-n-i-e".

Q. (By Mr. Ryan) On the "Jeanie"?

(Testimony of Michael M. Jensen.)

A. Yes, sir. I should say that I was on her three or four times. Then I have been on the "Admiral Sampson"; and on the "Admiral Evans"; and on the "Admiral Watson", and maybe others.

Q. When were you last through there before May, 1935?

A. Oh, around about 1920.

Q. On a flood tide what is the set of the tidal current in the—well, at a point five miles true south of Prince Lebo Island?

A. I don't know. [2845]

Q. What is it on an ebb tide at that place, say, one hour after high water?

A. The set of the current?

Q. Yes.

A. Oh, that varies.

Q. Well, what is it at that place one hour after high water?

A. I don't know.

Q. On an ebb tide?

A. I don't know. It varies anywhere from one knot to four or five.

Q. Well, don't speculate. If you don't know what it is, say so.

A. I don't know.

Q. You don't know?

A. I don't know because it varies.

Q. All right. Now at a point nine miles west southwest true from Triple Island Light, what is

(Testimony of Michael M. Jensen.)

the direction and force—that is, the set and drift of the current?

A. I don't know.

Q. Say one hour after high water?

A. I don't know. It varies. [2846]

Q. (By Mr. Ryan) What is it at any stage of the tide? Give me any stage of the tide.

A. I don't know.

Q. You don't know?

A. No; it depends on the tide.

Q. What?

A. It depends on the tide; and it depends on conditions, local or otherwise.

Q. At a point three miles true from Zayas Island what is the set and drift of the tidal current on, say, one hour after high water at Port Simpson?

A. Westerly.

Q. One hour after high water?

A. Yes.

Q. All right. On the flood tide, at a point three miles west true from Zayas Island, one hour after high water, what is the set and drift on that current?

A. It might be still the same as before; it might still be westerly.

Q. Have you been in that spot?

A. Not exactly—I cannot say whether I have been in that exact spot or not.

Q. Have you ever been in that spot, nine miles south of west true from Triple Island?

(Testimony of Michael M. Jensen.)

A. Not exactly, that I can say.

Q. Have you ever been in that spot five miles south true from Prince Lebo Island?

A. I cannot say I was in that exact place.

Q. What is the second drift of the tidal current at the southern entrance of Hudson Bay Passage, on the ebb tide? [2847]

A. I don't know.

Q. What is it on the flood tide?

A. I do not know.

Q. What is the set and drift of the tidal current in Brown Passage, at a flood tide, an ordinary spring tide?

A. I do not know.

Q. Do you know what it is on an ordinary spring ebb tide?

A. No, sir.

Q. When does the tidal stream turn between Dundas Island and Cape Fox, with relation to the time of high water at Prince Rupert?

A. I do not know that, either, but——

Q. When does the tidal stream turn, between Rose Spit and Overfalls Shallows——

Mr. Bogle: (Interposing) He was trying to finish his answer, Mr. Ryan.

Q. Have you any further answer that you want to make?

A. I do not know. It varies.

Q. Had you finished your answer to the last question with reference to the tide of high water on shore, or at Prince Rupert?

(Testimony of Michael M. Jensen.)

A. I do not know. It may not turn at all.

Q. You do not know what it is, do you?

A. No, sir. The tidal current might be evident if the water is still rising.

Q. I did not ask you about the rising of it, Captain; I asked you about when the tidal stream turned—do you understand that?

A. Yes, but I am trying to explain that I do not know, and the reason why I do not know.

[2848]

Q. Where would you go to get information with reference to that?

A. Well, the information in regard to tidal currents, ocean currents and coastal currents, on the Pacific Coast, especially in Alaska, is very meager.

Q. Would you go to the current tables for the Pacific Coast for the year 1935, issued by the Department of Commerce, if you wanted to find what they were in May, 1935?

A. I might; yes.

Q. You would go there, wouldn't you, Captain?

A. Not necessarily.

Q. You mean that you would not even open the book?

A. Not for the set of the current, I wouldn't go to the tide tables.

Q. I didn't ask you anything about the tide tables. You are familiar with the current tables of the Pacific Coast?

A. Oh, yes.

(Testimony of Michael M. Jensen.)

Q. That is what I am asking you about.

A. Yes.

Q. You mean you would not pay any attention, as a licensed master, to the Pacific Coast tables issued by the Department of Commerce?

A. The current tables issued for that particular locality?

Q. Certainly. Don't you know that?

A. No; because there were none when I was up there.

Q. Oh, I see. You were up there before 1920, is that right?

A. Yes.

Q. And this was issued in 1935, in January?

A. Yes.

Q. I will ask you about the flood tide off Hudson Bay Passage; [2849] you said you didn't know—I understood you to say on direct examination you knew what it was on ebb tide, is that right?

A. No; I did not.

Q. You do not know what the tidal current is, or the direction of the set of the tidal current off Hudson Bay Passage, is that right?

A. No; I do not.

Q. And you do not know what it is in Brown Passage?

A. I do not know the velocity. Are you referring to the ebb or the flood?

Q. I am referring to one hour after high water.

A. The set in Brown Passage?

(Testimony of Michael M. Jensen.)

Q. Yes; just off Brown Passage.

A. It should be westerly.

Q. How much?—What force?

A. I do not know.

Q. What is it on the flood tide?

A. It might not be any—it might be the opposite direction.

Q. Do you know what it is?

A. It might be in the opposite direction. The flood should set in the opposite direction.

Q. Is it eastward, is that right?

A. Yes, sir; or thereabouts. It might vary three or four points.

Q. Do you know what the direction of the set and drift of the tidal current is in Caamano Passage itself, between Dundas Island and Zayas Island? Do you know that or not?

A. No; I do not. It varies.

Q. What amount of deviation on a compass is, in your opinion, [2850] dangerous or safe navigation on a voyage from Seattle to Alaska?

A. If the deviation is known I would not consider any deviation dangerous.

Q. If you do not know what amount of deviation is dangerous on a compass on a voyage from Seattle to Alaska,—

A. (Interposing) If I do not know the deviation?

Q. Yes.

A. Any deviation is dangerous.

Q. What are the advantages of a compensated

(Testimony of Michael M. Jensen.)

or adjusted compass over one which is not adjusted or compensated, if you know?

A. Well, a compass always is adjusted and compensated before a ship goes to sea. It might be ten years previous to that particular time, or it might be——

Q. (Interposing) Do you understand the question; I am asking you a specific question. What are the advantages of an adjusted or compensated compass over an uncompensated or unadjusted compass? Now, can you state what they are, if you know?

A. Well, the advantages—well, I will not answer that question because I am not a compass adjuster.

Q. Are the charts of any use if your compass is not in good condition so as to show you the correct magnetic course?

A. Is the chart of any use if your compass is not correct?—Is that the question?

Q. That is it.

A. Yes; I suppose they are, to a certain extent.

Q. Will you tell me how? If you do not know what direction North is, how can you use a chart?

[2851]

A. Well, I could use a chart whether I know the direction of North or not. I cannot navigate it, but I can lay a course on a chart.

Q. You would not know whether your ship was on that course or some other course, would you?

A. No, of course I wouldn't, but I would have to lay the course down first, wouldn't I?

(Testimony of Michael M. Jensen.)

Q. Can you tell me how you would lay down a course, a magnetic course, on any chart, without knowing where North is, or where any other direction is?

A. I would lay the course on the chart.

Q. How would you lay it down if you didn't know what direction it was?

A. I do not lay that by the compass; I lay it on the chart and then compare the compass to it.

Q. That is exactly it. If your compass doesn't show the correct deviation you couldn't transfer it unto a compass course, what you had laid on the chart, could you?

A. If I know the error of it, I could.

Q. Yes; but if you do not know it?

A. No.

Q. If the compass was unreliable your chart wouldn't be any good to you, would it?

A. Why wouldn't the chart be good?

Q. You would not be able to set any course.

A. I would not condemn the chart because the compass is out.

Q. I am not condemning the chart; I am simply saying that I would like to have you tell me whether you think it possible for anybody, with an unreliable compass, to set a magnetic course, and make it good, which is shown on a chart? [2852]

A. No. Now you are getting to the question.

Q. That is all right; your answer is no.

A. I had it correct before.

Mr. Ryan: That is all, Your Honor.

(Testimony of Michael M. Jensen.)

Redirect Examination

By Mr. Bogle:

Q. Captain, if you see your landmark, which you, as a pilot, are familiar with, can you navigate then without a compass?

A. Yes, sir.

Mr. Ryan: I object to that. I do not think that is proper redirect examination, and also it is leading.

Mr. Bogle: That is all, Captain.

The Court: The answer will stand, then, if that is all. You may be excused from the stand, Captain.

(Witness excused.)

JOSEPH RAMSAUER,

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Bogle:

Q. Will you state your name, please?

A. Joseph Ramsauer.

Q. Where do you reside?

A. Seattle.

Q. What is your business?

A. Master Mariner.

Q. How long have you been going to sea? [2853]

A. Since 1900.

Q. What licenses do you hold?

(Testimony of Joseph Ramsauer.)

A. Unlimited ocean, any tonnage; pilot's license for Puget Sound and all of Alaska.

Q. How long have you held a master's license?

A. From 1920.

Q. How long have you held a pilots license for all of Alaska?

A. About the same time.

Q. Captain, how long have you been navigating the Southeastern and Southwestern Alaska waters as an officer?

A. Since 1916.

Q. And with what companies or company have you been connected?

A. The Alaska Steamship Company.

Q. During that entire time?

A. Excepting one trip or two.

Q. Have you had any experience in the waters of Dixon's Entrance, Hecate Strait and Caamano Passage?

A. Yes; I have been through there several times.

Q. Just tell us briefly the extent of your experience in navigating a vessel through those waters?

A. I have been through there as an officer, navigating officer, as pilot, and as master.

Q. On what type of vessels?

A. On all types.

Q. Freighters?

A. Freighters, passenger ships, big and little.

The Court: Over what period of years?

(Testimony of Joseph Ramsauer.)

The Witness: Since 1916.

Q. (By Mr. Bogle) From that navigating experience are you familiar with the set of the tidal currents in the vicinity [2854] of Caamano Passage, say at a point from a mile to two miles south of Zayas Island?

A. I do not know the strength.

Q. I mean the set.

A. As a rule; South, Southwest and West.

Q. What tide is that?

A. That is the ebb tide.

Q. How does the flood current set?

A. It is very uncertain about the flood.

Q. From your experience, what have you to say as to which of the two tidal currents is the stronger in that vicinity?

A. The ebb tide.

Q. From your experience, Captain, how closely does the beginning of the tidal currents and the strength of the tidal currents coincide with the predictions on the chart of that vicinity, chart No. 2828?

A. I do not know.

Q. Do they approximate or are they contradictable, in other words?

A. They give you an idea, but just how strong and what direction, that is up to you to find out when you get there.

Q. Have you been through those waters at night?